DR. AMBEDKAR AS THE LAW MINISTER AND A MEMBER OF OPPOSITION IN THE INDIAN PARLIAMENT FEBRUARY 3, 1950 TO APRIL 20, 1950

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*INSOLVENCY LAW (AMENDMENT) BILL

The Minister of Law (Dr. Ambedkar) : Sir, I move :

"That the Bill further to amend the law relating to insolvency, be taken into consideration. "

Sir, I should like to make a brief statement in order to enable the House to understand what exactly the Bill proposes to do. The law of Insolvency in India is contained in two 4-00 P. M. different Acts: One is called the Provincial Insolvency Act and the other is called the Presidency-towns Insolvency Act. The present Bill contains, apart from the short title, six clauses, which make amendments in the existing insolvency law. The amending clauses in this Bill fall into two categories: some make changes in the Presidency-towns Insolvency Act and the other propose changes in the Provincial Insolvency Act. Those that make changes in the Provincial Insolvency Act are four ; they range from clauses 3 to 6 and there are two, which relate to the Presidency-towns Insolvency Act.

Taking into consideration clause 2, all that clause 2 does is to remove a difficulty which has been felt for a long time. In the existing law as embodied in section 12 of the Presidency-towns Insolvency Act, it is said that an insolvency petition must be filed within three months from the occurrence of the event, which is recognised as the justifiable ground for the presentation of the petition. It often happens that the period of three months comes to an end when the courts are closed. Under the law as it sands, the creditor loses the opportunity of presenting a petition merely because when the court re-opens, it is more than three months since the occurrence of the event. Courts, of course, have taken different views in this matter. The Madras and Calcutta High Courts have held that the period cannot be extended. The Allahabad High Court has held that the period can be extended. It is therefore felt that both for the purpose of removing what might be called and injustice, because, if the creditor is not able to present a petition within three months by reason of the fact that the court is closed, it is certainly not his fault, and secondly also in order to remove the conflict of decisions, it is proposed by this amendment that in any case where the period expires on a day when the court is closed, it shall be lawful to present a petition on the day on which the court reopens.

Coming to clause 3, it amends section 21 of the Presidency-towns Insolvency Act. Section 21 deals with annulment of adjudication. Under section 21, although the power of annulment is given to the court, the matter is left within the discretion of the court. The words are, " the court may *".* Then, this section 21 is contrary to section 35 of the Provincial Insolvency Act : because, under section 35 of the Provincial Insolvency Act, the power is obligatory and the wording is, " the court shall '. Similarly, it is found that the existing section 21 is also to some extent inconsistent with its own section 13 sub-clause 4. Because, there it is stated that if the grounds exist for dismissing a petition, the court shall dismiss it. There is no reason why in the case of annulment the power should be discretionary and in the case of dismissal, the power should be compulsory. It is therefore felt that it would be desirable to bring the Presidency-towns Insolvency Act in conformity with the Provincial Insolvency law and use the word " shall " in the place of the word " may ".

Then, I come to clause 4. Clause 4 makes an amendment to section 53 of the Presidency-towns Insolvency Act. Section 53 deals with the rights of an execution creditor against the property of an insolvent, who has obtained a decree against the debator before he was adjudged insolvent. The question has arisen as to what should be the terminus, so to say, of the rights of the executing creditor: should the terminus be the presentation and admission of the petition of insolvency or should the terminus be the adjudication. It is felt that the proper terminus, the equitable terminus would be the admission of the petition ;

because, admission of the petition means that there are other creditors who are also recognised as having a right to a share in the property of the debtor. It is therefore unreasonable to permit the prior executing debator to continue to appropriate the property until the date of adjudication. There may be a considerable time between the admission of the petition of insolvency and the actual adjudication by the court. Therefore, this section substitutes the word " admission " for the word " adjudication ".

Then, I come to clause 5. Clause 5 introduces a new section, section 101A in the Presidency-towns Insolvency Act. The necessity for the introduction of this new section is this. As I just now stated, there is a provision for the annulment of adjudication. Now, the effect of the annulment of adjudication is that proceedings, which by reason of adjudication are terminated or cannot be initiated, become open. What the section permits is that on annulment other persons who have a right to sue or proceed against the debtor will be free to so. The law of limitation comes in their way. As lawyer Members of the House would know, one of the principles of the law of limitation is that once limitation begins, it does not stop. Nothing can prevent limitation being suspended. Therefore what happens is this .....

Shri Tyagi (Uttar Pradesh): I could not follow.

Dr. Ambedkar: I cannot open a class now.

The point is that as the right to sue begins long before the annulment by the time the annulment order is passed, the suit or the proceeding is time-barred. The question is raised whether this is a right thing to do, because if the proceedings or the right to sue is suspended, it is suspended not because of any fault on the part of the person who has this right to sue, but because the law says that when an adjudication is made all proceedings shall be suspended. Consequently, in order to remove this iniquity, what is proposed is this : That by this new section IOIA, it will be open for the Court and for the party to have the time taken between adjudication and annulment excluded from the computation of the period of the limitation laid down by the law, so that the right to sue may practically be deemed to have occurred when the annulment has taken place. Anyhow the period will not serve as an additional bar to any delay or lapses that might have occurred on the part of the person who has the right to sue.

Now, clauses 6 is merely clause 2 of the Bill. All that it does is this, that it introduces the same proviso in the Provincial Insolvency Act, so that even under the Provincial Insolvency Act, if the period of three months for filling the petition falls on the day on which the Court is closed, it would be open for a party to file the petition on the day when the Court re-opens.

Then, the last clause also amends the Provincial Insolvency Act. Under the present law, it is provided that along with the order of the adjudication, the Court

also fixes the date for the discharge of the petitioner and he is required to appear on the day on which the date is fixed for his discharge. Now, the words are " He shall appear and the court, if he does not appear, shall " take a certain action, as stated therein. The section so far as the wording is concerned, is mandatory, but curiously enough the Courts have interpreted ' shall ' as ' may ' making it discretionary. It is felt that probably the Courts have really carried out the intention of the Legislature in treating ' shall ' as ' may '. Similarly, the Presidency Towns Insolvency Act has also the word 'may' and not 'shall'. Therefore, this amendments proposes to accept the decision or the interpretation of the Court and substitute ' may ' of ' shall '. These are all the clauses in the Bill.

I might say that these amendments are very much overdue. These amendments were suggested a long time ago, in fact before the War, but it was not possible to undertake any legislation while the war was there. Consequently, there has been this delay. I might tell the House that these amendments have been approved by the Provincial Governments and the Provincial Governments, have also stated that although the subject of insolvency falls in the Concurrent List, it is desirable these amendments should be made by a law made by Parliament, so that they may be uniform throughout the country. That is the reason why this Bill has been brought forward.

Mr. Chairman: Motion moved :

" That the Bill further to amend the law relating to insolvency, be taken into consideration. "

Dr. Ambedkar: I am glad that my friend Shri Biswanath Das raised the points to which he made reference in the course of his speech. I should like to say that before bringing forth this Bill I myself was of the opinion that the time had come when these two enactments should be amalgamated into a single Act. The distinction which has been existing in our insolvency law between the Presidency towns and the other areas seems to me no longer justifiable. But I found that the amalgamation of the two Acts into one single enactment would take time and would also require special agency to be employed in the Law Department for the purpose of collating the sections. However, owing the financial stringency it was not possible for me to obtain the staff that was necessary to undertake this task in the expediency with which we intended to proceed. That was the reason why I kept back my original project of bringing forth a single enactment. I have, however, not abandoned that project and as soon a circumstances propitious to that purpose are available. I will certainly place a single enactment before Parliament.

With regard to the other question that he has raised, whether the jurisdiction in insolvency should be the District Court or Courts of small jurisdiction, as well as

the other sections to which he made reference which according to him, are sections which are abused by the insolvent, I don't think they are matters which can be debated on this particular occasion. The law of insolvency, as everyone knows, is a sort of legal relief against misfortune or mishap. It is quite possible that persons who ought not to get the benefit of the legal relief do get it, but that is a complaint which may not be made merely against the insolvency law—it can be made against almost every law. It is never possible for the Legislature to enact a measure which will be so tight as to be completely fool-proof and knave-proof. There will always be available many crooks who will be able to find out ways and means of getting round the act and abusing it. However, there is not the slightest doubt about it that the intention of my friend Mr. Das, that we ought not to allow any loophole in a law of this kind which would enable undeserving persons to get the relief which the law intends to give only to the really unfortunate, is a praise worthy object and no doubt in future legislation it will be borne in mind.

With regard to the points made by my friend Mr. Karunakara Menon, I think he has not followed what I stated in my opening remarks. He has forgotten that what we really are trying to do is to bring either the Provincial Law in conformity with the Presidency Law or to bring the Presidency law in conformity with the Provincial Law. We are not making any particular innovation which is not to be found in either of the two Acts. If he does not like the word " shall " which is introduced in some sections of the Provincial Act and wants " may ", then he shall also have to give his justification as to why the word " shall " should continue in the Provincial legislation. All that I have done is to bring the two in conformity so that there may be no obvious inconsistency in legislation in matters of this sort. If, as I have said, he has still any points of contention he can raise them when a new Bill consolidating the whole is brought before Legislature. For the moment these are only pressing amendments which both the Provincial Governments as well as, if I may say so, all the High Courts have accepted.

Mr. Chairman: The question is :

" That the Bill further to amend the law relating to insolvency, be taken into consideration. "

The motion was adopted.

Mr. Chairman: The question is:

" That clauses 2 to 7 stand part of the Bill. " The motion was adopted.

Clauses 2 to 7 were added to the Bill.

Dr. Ambedkar: I beg to move:

" That in clause I, for the figures ' 1949 ' the figures ' 1950 ' be substituted. "

The motion was adopted. *Clause I, as amended, was added to the Bill.*

Mr. Chairman: The question is : " That the Preamble stand part of the Bill "

The motion was negatived.

Dr. Ambedkar: I beg to move:

"That for the existing Enacting Formula, the following be substituted —

' Be it enacted by Parliament as follows :— '. "

Mr. Chairman: The question is: " That the Enacting Formula as amended stand part of the Bill. "

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill. The Title was added to the Bill.

Dr. Ambedkar: I beg to move : " That the Bill, as amended, he passed. "

The motion was adopted.

2
CRIMINAL LAW AMENDMENT BILL

The Minister of Law (Dr. Ambedkar): I beg to move for leave to introduce a Bill further to amend the Criminal Law Amendment Ordinance, 1944.

Mr. Deputy Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Criminal Law Amendment Ordinance, 1944. "

The motion was adopted.

Dr. Ambedkar: I introduce the Bill.

CRIMINAL LAW AMENDMENT BILL

The Minister of Law (Dr. Ambedkar) : I beg to move : " That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, be taken into consideration. "

[SHRIMATI DURGABAI *in the Chair.]*

The object of this measure is to replace Ordinance No. Ill of 1950, which is called the Criminal Law Amendment Ordinance, 1950. This Ordinance No. Ill of 1950 was passed in order to add a new section 9A to the Original Ordinance XXXVIII of 1944. The history of this Ordinance No. XXXVIII of 1944 may be helpful to hon. Members in order to understand why exactly the Ordinance III of 1950 was enacted.

During the war the Government of India as well as the Government of the various Provinces had entrusted public property and public funds into the hands of certain persons such as contractors and officers of Government. It was found

that some of these persons who were entrusted with Government property and funds had committed certain defalcations and consequently in order to try the delinquents Ordinance XXXVIII of 1944 was passed, which constituted special tribunals for trying these offenders. These tribunals were spread all over India in the different Provinces of United India before the Partition. These tribunals were given power to freeze the property of the delinquent by passing attachment orders and the courts so empowered were courts within whose jurisdiction the delinquents stayed or carried on business.

After the Partition a peculiar situation arose, namely that the tribunals which passed the orders of attachment against the properties of the delinquents became part of Pakistan, whereas the property of the delinquents remained in India proper. This difficulty has to a large extent held up the work of carrying on these trials. It is therefore now proposed that the power of passing further orders with respect to property which has already been attached by courts (which unfortunately happen to be now in Pakistan) should be transferred to courts operating within the Indian Republic. Consequently it is thought desirable to add this section 9A which permits the courts within whose jurisdiction the offences are now being tried to exercise the power of passing orders regarding the property which is held by these deliquents.

The Ordinance was promulgated because the matter was regarded as very urgent. As the power of continuing the Ordinance is of a limited duration it is necessary to revise the Ordinance before the expiry of time by this measure.

Mr. Chairman: Motion moved :

"That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, be taken into consideration. "

Shri Himatsingka (West Bengal); On a point of information, may I know if the property that has been attached by an order of the court is now in Paksitan. If the property continues there.....

Dr. Ambedkar: The property is here.

Mr. Chairman; The question is:

"That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, be taken into consideration. "

Mr. Chairman: The question is:

Mr. Chairman: There are no amendments. I will put the clauses.

The question is: "That clauses 2 and 3 stand part of the Bill."

The motion was adopted. *Clauses 2 and 3 were added to the Bill. Clause I was added to the Bill.* The Title and the Enacting Formula were added to the Bill.

Dr. Ambedkar: I beg to move: " That the Bill be passed. "

Mr. Chairman: The question is: " That the Bill be passed. ".

The motion was adopted.

3

MOTION FOR ADJOURNMENT : ESCAPE OF MIR LAIK ALI OF HYDERABAD FROM CUSTODY.

Mr. Speaker: May I ask who is the controlling authority or the directing authority, so far as the prosecution of Mir Laik Ali and others is concerned ?

Sardar Patel: The final prosecution sanction is from the Nizam.

The Minister of Law (Dr. Ambedkar) : I do not know but the first impression which I have of this matter is this that Hyderabad is like any other State. There is no distinction between Hyderabad State under the Constitution in its relation to the Centre and, say, for instance Bombay in its relation to the Centre, which means that for subject matters set out in List II the responsibility is entirely of the State, while the responsibility, so far as subjects in List I are concerned, belong to the Centre. The same rule would apply to Hyderabad. That is to say that so far as the matter relating to the custody of Laik Ali is concerned, it is a matter of law and order which is undoubtedly under the Constitution a matter for local administration. On that footing, I submit that this is not a matter which constitutionally could be held to be under the control of the Central Government, but I should like to add one more remark, *viz.* that in view of the fact that there is no local legislature to which the local Ministry could be held to be responsible, it is possible—1 speak subject to correction—that whatever action is being taken by the local administration is perhaps done under the power which the Constitution vests in the Central Government of direction and control over certain States. I am not yet aware as to what the position under that part of the Constitution is. But so far as the Constitution is concerned and the relation of Hyderabad State to the Centre is concerned, this, I submit, would be a matter falling within law and order which is absolutely a States subject.

The Minister of Law (Dr. Ambedkar): Sir, I am grateful to you for the second opportunity which you have given to me to clarify and to explain further the points that were made by me as well as by other Members of this House in the course of the debate that took place yesterday on the adjournment motion. Since you have been good enough to point out to me, before I commenced my remarks, the difficulties which you feel, I will follow the line of points which you have to set out: I will first of all try and explain the Constitutional position of the States on the one hand and the Centre on the other and to what extent the States are free and independent of the Centre, to what extent they are under the subservience or surveillance or superintendence or control of the Centre.

The first thing I would like to draw the attention of the House to is this that there is a certain amount of parallelism in the constitutional frame-up of the Central

Government and of the States. For instance, with regard to the Central Government you have article 53 which says that the executive power of the Union shall be vested in the President. Corresponding to that article, you have article 154 which states that the executive power in the States shall be vested in the Governor or the *Rajpramukh,* as the case may be. Coming to the question of actual administration, article 74 of the Constitution provides that there shall be a Council of Minister to aid and advise the President in the matter of the exercise of the executive authority which is vested in him by the Constitution. Analogous to that article, we have also article 163 which relates to the States. It also is worded in the same language as article 74. It says that there shall also be a Council of Ministers to aid and advise the Governor in the carrying out of the administration which is vested in the Governor, or the *Rajpramukh.* Then we have another article, 79 which vests the legislative power of the Centre in Parliament consisting of two Houses. Analogous to that, we have article 168 constituting a legislature for the States in almost the same terms except for the fact that in some cases there are two Houses and in other cases there is one House. There is a further provision, namely, that where at the commencement of the Constitution there does not exist any popularly constituted legislature in any States, then the *Rajpramukh* of that State shall be deemd to be legally the legislature for that State. It will therefore be seen that the paraphernalia, so to say, of administration in accordance with the Constitution is parallel in both cases. Supplementing this by what I stated yesterday that the legislative authority of Parliament is primarily confined to subjects enumerated in List I, and the legislative authority of the States is confined to subjects mentioned in List II, with the further proposition— to which there can be no objection raised because it is a well-established judicial proposition—that the legislative authority is co-extensive with executive authority, it follows that so far as the States are concerned, primarily and fundamentally they occupy an independent position in the Constitution. That being so, it is quite clear that by the rule of comity and also by the rule governing responsibility, it would not be open to this House to discuss any matter, either in the form of legislation or in the form of administrative action, which has been taken by the State which lies within the ambit of subjects mentioned in List II. As I stated yesterday, so far as I can understand the subject-matter of the Adjournment Motion relates primarily to law and order. Law and order is a subject which is included in List II and therefore, it would not be open to this House to discuss such a question when the Legislature of the State is competent by the rule of the Constitution to deal with it. That I think is a general proposition which must be accepted.

I should like, if hon. Members want to see the thing in a clear light to ask them to compare the provisions of article 239 with the provisions of the article to which

I have referred in regard to the States. Article 239 refers to States in Part C ; they are what are called " Centrally Administered Areas ". The language of article 239 is absolutely different from the language of article 154. The language of article 154 is that the executive power, which also includes administration, vests in the Governor, while article 239 begins by saying that the States in Part C shall be administered by the President, which means " President on the advice of his Council of Ministers ", which in turn means that the responsibility for any matter of administration so far as States in Part C are concerned, directly falls upon Parliament and upon the Central Government. It is therefore open for any Member to discuss any matter relating to States in Part C on the floor of the House, which would not be the case so far as the other States are concerned.

With regard to the States, I should also like to point out that although our Constitution divides the States in Part A and Part B for certain purposes, that is for the purposes to which I have referred, namely the frame of their constitution, the vesting of the executive authority, the authority to make law, and all that, they are on a parallel footing and there is complete parity. True enough that the Constitution contains an article, article 238, which applies with certain modifications, the articles which apply to States in Part A to States in Part B. But anyone who has the curiosity to examine the provisions of article 238 will find that the changes made in the articles which are applicable to States in Part A in their application to States in Part B are of a very minor character—substituting " Governor " for " Rajpramukh " etc. a sort of terminological difference. Beyond that there is no difference at all. Therefore, from that point of view, just as it would not be competent for this House to discuss any matter falling within the jurisdiction of States in Part A, it would also not fall within the jurisdiction of the House to discuss any matter relating to Part B States because both of them, as I said, are placed by the Constitution on the same footing.

At this stage I would like to endorse what the Hon. the Home Minister has said just now. The mere fact that the Nizam is a *Rajpramukh,* the mere fact that there is no legislature, the mere fact that certain officers have been lent by the Home Ministry to the Nizam for carrying on the administration of the State, would not alter the character of the Hyderabad State being exactly on the same footing as other States in Part B, which is the same thing as being equivalent to States in Part A. I shall have to say something at a later stage by way of a small qualification, but I should like to say that the mere fact that the officers have been lent would not alter the status and the character or position of the Hyderabad State within the field of the Constitution.

Now, this is the general proposition, namely that the States in Part A as well as the States in Part B are free and independent of the Centre in the matter of executive authority, in the matter of legislative authority and in the mode and

manner of administering the legislative and executive authority that they possess. This is the general proposition. The question that we have now to consider is the provision contained in article 371, and the question is: does the provision of this article make any change in the position of States in Part B ? Because, as everyone knows, article 371 applies only to States in Part B and does not apply to States in Part A. In the course of the debate yesterday, I found that one hon. Member said that the Central Government possess no authority to issue any directions to the States except under emergency provisions, which gave me the impression that in his view article 371 could *not* be the foundation for the Ministry of States or the Government of India to issue directions to States in Part B. With all respect, I submit that I cannot accept that position. To explain the matter fully, the Centre has the power to issue 352 directions under the Constitution to the various States, under *four* different articles. The first is article which is what is called an emergency article arising out of war or internal aggression and things of that sort. The second article which permits the Centre to issue directions to the States is article 360 which deals with financial emergency; when the President is satisfied that the credit of the State is in jeopardy he can declare a state of financial emergency and under that article he can issue certain directions to the States. The third article is article 356 which is called a breakdown article. When the President finds that the Constitution in any particular State is not being carried on in accordance with the provisions contained therein, then also, the President issues certain directions to see that the Constitution is carried on in accordance with its provisions.

Then comes the last Article, Article 371, which is the supervisory Article. It has to be understood that Articles 352, 360 and 356 are, in a general sense, emergency articles, that is to say, they can be invoked for the purpose of giving directions to the States only when certain circumstances arise and the President is satisfied that those circumstances have arisen.

Pandit Kunzru (Uttar Pradesh): May I ask the Hon. Minister of Law whether he has made this observations with reference to Article 371 also ?

Dr. Ambedkar: No, I am taking it separately. I am trying to point out the distinction between the provisions contained in Article 371 on the one hand and Articles 352, 360 and 356 on the other. As I said, these latter Articles are emergency Articles. They are not Articles which deal with normal administration in normal times. Circumstances must justify their invocation. The second thing with regard to them is that they apply to States in Part B to the same extent, in the same degree and in the same manner as they apply States in Part A, provided of course, that the emergency has arisen.

Article 371 stands on a different footing. It does not require an emergency. It can be used in normal times. That is one feature of distinction. The other feature

of distinction is that it applies only to States in Part B. It does not apply to States in Part A. Therefore, in my judgement it is not correct to say that the Central Government must use either Article 352 which is an emergency Article, or Article 360, or Article 356, to issue directions to States in Part B. *(Pandit Kunzru :* Hear, hear). Independently of these three Articles, the Centre has the power to issue directions to States in Part B under Article 371.

Pandit Balkrishna Sharma (Uttar Pradesh): And it is only transitional.

Dr. Ambedkar: That is a different matter. The transition has not ended. The Article is in operation and we must therefore take it as it is. Therefore, in my judgement, Article 371 does give the power to the Centre of issuing directions to States in Part B even though there is no emergency. It is an Article which is to be used in normal times.

Now, Sir, the question you have been good enough to raise is one which if you will permit me, I would like to take up towards the close. In so far as Article 371 is concerned and in so far as a direction has been issued—1 am using my language very deliberately—in so far as Article 371 is concerned and in so far as it has been used for the purpose of issuing a direction to the State Government, it seems to me that there is a possible basis for discussion of that matter by this House. That is my view of the matter.

Now, I would like to take up.....

Mr. Speaker: May I have clarification on one point at this stage? Will the failure to give direction.....

Dr. Ambedkar: I am just coming to that. That is the very point I want to deal with, because that is a very important one, and we must be very clear about it.

Pandit Balkrishna Sharma: May I know what direction has been issued under Article 371 ?

Dr. Ambedkar: I am coming to that. I am stating the position generally. My. Hon. colleague, the Home Minister will say what direction he has issued. I am not in charge of administration, and I have merely been asked to explain the legal position.

Now, Sir, I was trying to find out whether there was any precedent in the past procedure of our Legislature which could help us to come to some definite conclusion on the issue before the House. I have examined the provisions of the Government of India Act, 1919, in order to find out whether there was any ruling which could furnish to us some kind of a precedent.

As the House will remember, the scheme of the Government of India Act, 1919, was to divide, so far as the Provinces were concerned, the field of administration into two parts: the transferred part and the reserved part. The House will also remember that under the old Government of India Act the superintendence and

control of the civil and military Government of India was vested in the Secretary of State in Council. It was also provided that the Governor-General in Council as well as the Governors would carry out their respective duties of administering this country, subject to the power of superintendence and control of the Secretary of State. When the field of administration was demarcated into the reserve and transferred sides in 1919, a rule was made that those subjects which were classified as ' transferred subjects ' were not to be under the supervisory control either of the Secretary of State or of the Governor-General or of the Governor, because they were administered by Ministers who were responsible to the Legislature. Now, the question that arose under the provisions of the 1919 Act was this : whether it was possible for the Central Legislature to ask a question with regard to the administration in the Provinces. The researches that I have made—and I am grateful to the Secretariat of the Speaker for the help they have rendered me in this connection—show that the then President of the Assembly took the view that in so far as the question related to transferred subjects, he would not allow them, but if they referred to ' reserved subjects ', he would allow them subjects to the sanction of the Governor-General. You will recollect that such sanction was necessary, because the Assembly worked under both Rules and Standing Orders. The Rules were made by the Governor-General, which sometimes restricted the scope of Standing Orders. Therefore, his permission was necessary. But the principle was conceded that in so far as the administration continued to be under the superintendence, direction and control of the Governors, of the Governor-General and ultimately of the Secretary of State, it was possible for a Member of the Central Legislature to ask a question relating to those subjects and the President, subject to other conditions being fulfilled, would admit that question. That is one precedent. Of course, it must not be extended to a field which it did not cover. As I said, it extended only to questions and not to other matters.

Now, I come to the Government of India Act, 1935. Probably, some Members of the House will remember that as soon as the Government of India Act, 1935, was passed, certain members of the House of Commons were considerably agitated as to their rights to ask questions to the Secretary of State in Parliament with regard to the administration of India and a question was put to the then Prime Minister, Mr. Chamberlain, in the year 1937. Mr. Chamberlain gave the reply to the effect that since the administration of the country was transferred to agencies in India and to that extent the Secretary of State ceased to possess to have any kind of responsibility for the actual administration, it would not be possible or permissible for Members of Parliament to put any questions to the Secretary of State on those matters. That matter was taken up in the Assembly here immediately after the interpellations had taken place in the House of Commons

and a question was put by our old friend Mr. Pande, who was a well-known Member of this Assembly, to the then Law Member, Sir Nripendra Sarcar. I propose to read the answer which Sir Nripendra Sarcar gave, because it is a very illuminating reply and, in my judgement, supports the conclusion to which I have come and to which I have given expression just now

The answer of 'Sir Nripendra Sarcar was this:

" (a) The general position is that where the executive and legislative authority are vested under the Act in the provinces, it would not be appropriate for the Central Legislature to discuss those matters. There are likely, however, to be matters in which the Central Legislature may be properly interested, (e.g., a direction under sub-section *(1)* and *(2)* of section 126 of the Government of India Act) and thus the prevention of any encroachment on the provincial sphere may well be left to be regulated by the powers vested in the Hon. the President under Rule 7 of the Indian Legislative Rules in regard to questions and in the Governor-General under Rule 22 in regard to the Resolutions. "

My submission is this: that the provisions contained in Article 371 are more or less analogous. I do not say they are exactly alike to the provisions contained in Section 126 of the Government of India Act. The Act of 1935 vested power in the Governor-General, it says:

" The executive authority of the Federation shall extend to the giving of such directions to a province as may appear to the Federal Government to be necessary for that purpose ".

Further it says;

" The executive authority of the Federation shall also extend to the giving of directions to a province as to the carrying into execution thereunder any act of the Federal Legislature, etc. "

As I said, Section 126 deals with power to give directions to the provinces. Similarly, Article 371 also gives power to Central Government to give directions. As interpreted by my predecessor Sir Nripendra Sarcar, on the basis of the discussions and clarifications that took place previously in the House of Commons, he came to the conclusion that a matter such as the one lying within the purview of section 126 could be discussed in this House. My submission, therefore, is that that opinion of his is a sound one.

Shri T. T. Krishnamachari (Madras) ; May I Sir, suggest to the Hon. the Law Minister to give us his opinion on Section 126 of the Government of India Act *vis-a-vis* Articles 257(1) and 73(1) proviso of the Constitution.

Dr. Ambedkar: I have not considered those sections. If at any other time the point is raised I would be prepared to clarify it. For the time being, it does not seem relevant to the subject we are discussing.

Pandit Kunzru: Will the Hon. Law Minister read out Article 371 and tell us

whether under it orders can be issued by the Government of India to Governments of the States only in regard to Central (Federal) subjects, or also in regard to subjects included in the State list ?

Dr. Ambedkar: It is quite clear that Article 371 contemplates issue of directions relating to matters lying within the purview of the State Legislature and the State Executive. It is really in relation to the administration of the States that Article 371 has been drafted. In my mind there is no doubt on the point at all. Now, Sir.....

Pandit Kunzru: May I ask the Hon. the Law Minister how he then regards Article 371 as analogous to Section 126 of the Government of India Act which restricted the executive authority of the Government of India to matters included in the Federal list?

Dr. Ambedkar: I do not think my hon. Friend has understood me. The point is this. Let me put it in a somewhat pointed manner. When one Government has the right to give directions to another, could such directions be the subject matter of discussion in an Assembly to which that particular Government is responsible ? That is the question. I am not using Section 126 for the larger issue. I am using it for the limited issue, namely, that wherever there is power to give direction, that power implies responsibility and wherever there is responsibility there must be discussion. That is my point.

Now, Sir, you were good enough to ask me to explain what " general control " meant. Now, it seems to me that the words " general control " are used in order to include every matter of administration arising within that particular State. The direction need not be confined to any particular matter. Today the direction may be given with regard to the Police administration; tomorrow it may be given with regard to revenue administration; at a later stage it might be found necessary to issue a similar direction with regard to finance. " General control " means control extending over the whole field of administration. That is how I use the word general control.

It would not be permissible for me, I suppose, to give the history as to how this Article came to be drafted. I would not ask your permission, nor if you give it would I use it. But I have a very clear picture in my mind as to what this Article was intended to cover. This Article does not take away the powers given to the State under the various Articles to which I have referred, namely, 154, 162, 163 and 168, the power of executive authority, of administration and of legislation. But in the interest of good Government it superimposed the authority of a direction given by the Centre in order that the levels of administration may not fall down. That, Sir, is the implication of Article 371.

Dr. R. U. Singh (Uttar Pradesh): May I ask a question, Sir? Is it contended that when control has been exercised, or is being exercised, and directions have

been given, Parliament is not competent to discuss the matter ?

Mr. Speaker: He is advocating just the reverse.

Dr. Ambedkar : Sir, you referred to the question whether there is a Legislature or whether there is no Legislature is a matter which can be taken into consideration in coming to a conclusion. Theoretically, of course, no such consideration can be paid to the existence or non-existence of a Legislature, because the Constitution itself expressly says in Article 385 that where there is no Legislature, the Rajpramukh shall be deemed to be the Legislature. But it may say so, this matter whether there is a local Legislature where the particular point could be agitated or not, was taken into consideration by your predecessor in dealing with questions during the last war. As you remember, Sir, in 1939 when the war was declared, the Congress party which was the governing party in the various provinces resigned on account of certain differences between the party and the Government, and consequently, section 93 was applied. Here certain Members asked certain questions with regard to the administration in the Provinces as conducted by the Governor and his Advisers. It was then held that it was right and permissible for Members of the Central Assembly to ask questions for information with regard to the adiministration in the Provinces where there was no Legislature functioning. I remember having read the proceedings, and much emphasis was laid on the fact—not on the legal fact, but as a *de facto* position—that since the people have no opportunity to ventilate there grivances before a properly constituted Legislative, that in itself was an additional ground for permitting questions being asked in the Central Legislature about provincial administrations. So technically it would not be right to take this into consideration because the Rajpramukh is the Legislature. But I say, technicalities in a matter of this sort, should not be allowed to come in, much as some hon. Members might like to.

Mr. Speaker: At this point, may I ask whether he would place question for information on the same footing as a discussion ?

Dr. Ambedkar: As I said, the precedents which I have collected refer only to questions. According to Sir N. N. Sarcar which is the authority I have relied on, the matter, can be discussed, the propriety or otherwise of a direction can be discussed. It seems to me that as he has used the word " discussion " it would be large enough to include even an adjournment motion.

Now, Sir, I come to the other question which you have been good enough to put to me, " What is the scope of article 371 ? " Now, Sir, reading article 371, I should like to point out one important matter and it is this, that article does not cast upon the Government of India the duty of having general control. It is not an article which imposes a duty. It is an article which permits the Government of

India to give directions. Now, Sir, this distinction which I am making is a very important distinction and it must be very clearly borne in mind.

Shri Kamath (Madhya Pradesh): May I point out that the language used in Article 371 is—

" ..... the Government of every State ..... shall be under the general control ..... etc. etc."

Dr. Ambedkar: ' Shall be ' means what ? It is the duty of the State to be under. There is no duty on the Central Government.

Shri Kamath: There is mutuality.

Dr. Ambedkar: No, no mutuality at all.

Now, the position is this. That distinction is important from this point of view. When there is the duty cast to do a certain thing, then a motion of censure could be passed either upon the mis-performance of the duty or upon the failure to perform the duty. But if it is agreed that this article merely permits the Government of India, in the interest of better administration, to issue on certain occasions or in certain situations, certain directions telling the Provincial Government that they may do this or they may not do that, then I am sure about it that the only question that can arise for consideration is, what direction was given, whether the direction was proper, and whether any steps were taken to see that the directions were carried out. If the Central Government in its wisdom, in its discretion, felt that notwithstanding the fact that there were elements in the situation which called for the issue of an order, did not think it necessary, proper or wise to give a direction, then the Central Government could not be called to account for failure to do so. That, I submit, is a distinction which must be borne in mind.

Pandit Kunzru: How does my friend come to that conclusion ?

Dr. Ambedkar: That is how I read it. My friend, as I said, may read it differently; I know, and people who are, if I may say so, more enthusiastic than cautious may probably like to give a more stretched meaning to this article. But looking at it from this point of view, from the fact that the Constitution has vested the States with the right to administer their affairs, and has only given what may be called in the case of States in Part B certain residuary powers to give directions on certain matters and on certain occasions, this power which may be exercised, as I said, under article 371 must be of a very limited character. My submission, therefore, is that although as I read article 371,1 cannot help accepting the conclusion that it does admit the possibility of discussing a matter relating to the administration of States in Part B, it must be of a very narrow character. That is all I have to say.

The Minister of Transport and Railways (Shri Gopalaswami) : I only want to refer to one particular point. If you are going to give a general ruling on the applicability of article 371, its interpretation and the admissibility of an

adjournment motion, based upon that article, I should like you, Sir, to defer your ruling till other Members like me have put certain points before you. But if you are going to reject this motion on the short ground on which the Hon. Law Minister ended his speech, I need not waste the time of the House by puting these points before you.

Mr. Speaker: I will tell him what is passing in my mind. I do not propose to hurry up any decision. I have heard the Hon. Law Minister, I have heard his point of view, and if other Members are anxious to address on the purely constitutional aspect of it, without going into the merits, I am prepared to hear them; but that discussion should be of a very short duration. I have not yet made up my mind as to.....

Dr. Tek Chand (Punjab) : Shall we do it today or on some other day? This question raises very important.....

Mr. Speaker: I have not finished. The hon. Member will please let me finish first, and then he will see that I entirely agree with him, and that I am going to do what he wishes to be done. The point I was coming to is this. I am restricting myself only to the facts of the present case, and I want to know whether I have understood the Hon. Law Minister correctly. He has given his views on the wider issues about the scope and there might be, as he says, occasions when the Centre may exercise this power; but am I clear in understanding him this way that, supposing no directions are given by the Centre or no control is exercised, then the present motion would not be in order. Is that his conclusion ?

Dr. Ambedkar: That is my view.

Mr. Speaker: The other position I want to get clarified was about the words ' general control '. He stated that the word ' general ' means the control extending to the whole administration.

Dr. Ambedkar: And not detailed control, not over day to day administration.

Mr. Speaker: That is what I wanted to be clear about. Subject to the general policy laid down by the Centre, the States will have perfect autonomy.

Dr. Ambedkar: But with the further fact that if the Government of India is satisfied that the directions are not carried out, then the other provisions will come into operation.

Mr. Speaker: That is a different matter. But no question for a discussion can arise in this House unless the power in Article 371 is exercised by the Centre.

4
PARLIAMENT (PREVENTION OF DISQUALIFICATION) BILL

The Minister of Law (Dr. Ambedkar) : I beg to move : " That the Bill to make provision in regard to certain offices of profit under article 102 of the Constitution,

be taken into consideration ".

I do not think that it is necessary for me to make any long statement to enable the hon. Members to understand the provisions of this Bill. It is a very short one. It has only one clause but just to put hon. Members in a position to know exactly what is being done, I would like to say that article 102 of the Constitution provides that certain persons shall be disqualified from being Members of Parliament. One of the disqualifications relates to holding of an office of profit under Government. So far as Ministers are concerned, they are exempted from the operation of article 102 by clause (2) of that article. We have however in the Government of India not only Ministers but also other categories of Ministers *viz.* Deputy Ministers and Ministers of State. These offices were created before the Constitution came into operation. Their occupants were entitled to hold office at the same time as Members of Parliament because during the period which intervened between the 15th August 1947 and the 26th January 1950 the Government of India Act 1935, as adapted, did not contain the provision to which I have made reference *viz.,* holding of an office of profit as a disqualification. The situation has, of course, now altered by reason of the provision contained in Article 102 so that from the 26th January 1950 Ministers of States and Deputy Ministers would have become disqualified from sitting in Parliament. In order to get over the difficulty the Government issued an Ordinance permitting them to sit in Parliament and to remove the disqualification they would have otherwise incurred. As hon. Members know, under the new Constitution, the life of an Ordinance is a very short one *viz.,* six weeks from the re-assembly of Parliament. In this particular case Parliament assembled on the 28th January so that the Ordinance would expire on the 12th of this month. It is necessary that this Bill should be got through before the Ordinance ceases to have legal operation. The Bill seeks to include what I may say, clause (a) of Section 2 of the Ordinance, which referred to Deputy Ministers and Ministers of State. The present Bill does not propose to give effect to clause (b) of section 2 of the original Ordinance which made provision for part-time offices. Instead of that, the Bill seeks to include two more offices *viz.,* Parliamentary Secretaries and Parliamentary Under-Secretaries. It is felt that although these offices are not in existence now and have not been created, it is quite possible that the Government of India may find it necessary to create them. It was therefore felt that it would be better to enlarge the scope of the Bill in order to include these offices as well. I do not think that any more argument is necessary to support the Bill and I hope the House will accept it.

Mr. Deputy Speaker: Motion moved.

Dr. Ambedkar: I would like to understand, whether my hon. Friend agrees to

the proposal in the Bill that these two offices should be created and being created, they should be exempted from the provision enacted in article 102 of the Constitution ? Let us understand it very clearly and if my hon. friend is going to take the whole of the half hour, there is no use going any further.

Shri Tyagi: If he is tired, he might go home.

Mr. Deputy Speaker: I agree any length of time can be taken but so far as this Bill is concerned, it is a very small point.

Dr. Ambedkar: I only wanted to understand what exactly was the point my hon. friend was driving at and if he was going to take the whole of the half hour, it is much better to begin tomorrow and finish the Bill.

Shri Tyagi: When people are not quick to understand, I take time to make them understand.

Pandit Kunzru (Uttar Pradesh): Do Government insist that the Bill should be passed today?

Dr.Ambedkar: I am not saying so. It is only the Hon. Deputy Speaker who says, "let us sit for half an hour . "

Pandit Kunzru: I think it will be a fruitless discussion and I venture to think that the discussion will end quicker if we adjourn till tomorrow.

Dr. Ambedkar: On the first point raised by my friend, Mr. Tyagi, as to whether there is at all any necessity for bringing in this measure, I think what has fallen from the Prime Minister should suffice, and I would only like to add this by way of clarification : Our real difficulty has arisen by reason of the fact that the definition Article, Article 366, does not define the word " Minister ". Therefore the word " Minister " is left to be interpreted in two ways, either in the larger sense which would include not only Members who are Ministers but also Members who are Deputy Ministers or Ministers of State. It would also include in the popular sense Parliamentary Secretaries and also Parliamentary Under-Secretaries. That is one interpretation which is perfectly possible, but it is also possible to put a narrow construction whereby Ministers would mean not Ministers including Deputy Ministers, Ministers of State, Parliamentary Secretaries or Parliamentary Under Secretaries, but only Members of the Cabinet. As the House knows that there is customarily—1 am deliberately using the word ' customarily '—quite a distinction between Ministers who are Members of the Cabinet and Ministers who are not Members of the Cabinet, and it is quite possible for anybody, even for a Court, to put the narrower construction and confine the *de jure* interpretation of the word " Ministers " to Members of the Cabinet only, in which case undoubtedly.....

Pandit Kunzru: Which Court is my hon. Friend referring to ?

Dr. Ambedkar: Any Court. I am coming to that also. I was only speaking generally. Any person may question that interpretation. If that interpretation is questioned, obviously, there would be difficulties. Therefore, it is by way of caution, byway of removing any kind of doubt or difficulty that this Bill has been brought in, and as I said, if the interpretation given by my friend, Mr. Tyagi, was upheld in a place where such question was likely to be raised, no one would be unhappy if it was then found that the Bill was unnecessary, but if unfortunately notwithstanding the great argument, the extensive argument, the original argument addressed by my friend, Mr. Tyagi, it was found that that construction was not the correct construction, then it would be obvious that the Parliament did wise in passing this Bill. Therefore so far as the exact provisions of the Bill are concerned, I think a cautious House ought to support them. I would not say anything more on that point.

In regard to the other question, *viz.,* disqualification incurred by Members of the House by reason of the fact that they are holding some kind of office which is outside the Ministerial offices.....

Shri Sidhva: I mentioned Committees.

Dr. Ambedkar: That is why I said non-Ministerial offices. I am using the exact legal term. That question, I think, requires to be considered. That question was raised yesterday after Parliament rose, but unfortunately when I went to my room, I found that all the libraries were closed and I could not get the necessary books of reference which I wanted to consult, because I knew that this matter would be raised in the House and I thought that I should be prepared to give some kind of reply as far as I could under the circumstances. I have applied my mind to this matter and all I can say is that I have come to some tentative conclusion which I should like to present before the House.

In the first place, I should, like to remove the sort of scare which has been raised by my friend, Mr. Sidhva, that any enemy of his might create trouble. I hope he has none. I think he is one who may be correctly described as *Ajatashatru.* Any how, our Constitution has made ample provision that matters of this sort relating to disqualification should not go to a Court. By Article 103 we have left the power to decide whether any particular Member of Parliament has incurred a disqualification by reason of accepting an office of profit or not, with the President. The President is the final authority. Under Article 103 the President has been released—very deliberately and very wisely—from acting on the advice of the Ministry, because it was felt that the Ministry might give an interested advice to the President. Therefore, in this particular case relating to disqualification arising out of holding an office of profit, the President is required to act on the advice of the Election Commissioner.

Shri Kamath: What about clause (2) of Article 103 ?

Dr. Ambedkar: I am coming to that. Article 103 is, so to say, an exception to article 74. Under Article 74 the President is required to accept the advice of the Ministers in all matters relating to legislation and administration. With regard to this, an exception has been made, and as I said, a deliberate exception has been made so that no political influence could be brought to bear on the decision of the question by the President.

Shri **Kamath:** Which is the body which acts for the Election Commissioner now?

Dr. Ambedkar: We are immediately constituting the office of the Election Commissioner, and I have no doubt about it that before any such question is presented to the President, the Election Commissioner will be there to deal with the matter.

Shri Kamath: In this particular case, clause (2) of Article 103 which is mandatory has not been observed.

Clause (2) says:

" Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion. "

Mr. Deputy Speaker: No such question has been referred to the President.

Shri Tyagi : *rose—*

Dr. Ambedkar: Sir, I cannot answer to all these petty questions which have no bearing on the question. My friend, Mr. Sidhva, had suggested to the House that any number of people could go to the High Court or the Supreme Court and obtain a decision. That procedure is barred under the Constitution. That matter is left entirely to the President.

Now, I come to the other question which Mr. Sidhva very pointedly raised as to what would happen to Members of Parliament who have been appointed to various Committees. Would they incur disqualification or would they not incur disqualification ? Now, I have here before me an analysis of the various types of Committees on which Members might be invited to serve and where they might get some sort of remuneration or fee or something. The first is this : Membership of Committees or Commissions constituted by a resolution of Parliament or under rules made by Parliament, for instance, the Public Accounts Committee, the Estimates Committee, the Standing Committees attached to various Ministries etc. There might be various others, but the substantial point is that Committees are appointed by a resolution of Parliament or under the rules made by Parliament. I speak of course without any kind of dogmatism but I do not feel any doubt that the membership of any such committee would involve any disqualification, for the simple reason that the appointment is made by

Parliament either by rules relating to any particular committee or generally by rules framed for the constitution of committees.

The second class of membership relates to all corporate bodies constituted by an Act of Parliament, such as, for instance, where an Act provides for the election of Members by Parliament either from among its Members or from outsiders, for example the Indian Oilseeds Committee, the Indian Nursing Council, the Employees State Insurance Corporation or the Central Silk Board. Under the same category are also cases where such Members are appointed by the Central Government, such as, for instance, the Coal Mines Stowing Board, the Delhi Transport Authority and so on. I am only expressing here my tentative conclusions and it seems to me that under the first category where Parliament provides for the election to certain statutory bodies that could not be regarded as an appointment by Government and therefore membership of a committee like that, in my judgement, would not involve any disqualification. But with regard to the second category where such Members are appointed by the Central Government I feel a certain amount of doubt. I think that that probably might involve a certain disqualification, for the simple reason that although the bodies to which appointments are made are statutory bodies created by a law enacted by Parliament, yet the appointment is by Government. Therefore, that is one element to be taken into consideration in deciding whether the possible consequence may not be disqualification. It is possible to make a further distinction, namely, that a Member of Parliament appointed by Government to a statutory body such as under the Coal Mines Safety (Stowing) Act or the Delhi Transport Authority may be paid out of the funds belonging to that particular authority and not from funds belonging to Government; whether that would be a possible basis for distinction I have my doubts. I personally think that that would involve disqualification, because it may be regarded and interpreted as a fraud upon the Statute, by getting a Member of Parliament to be appointed but to be paid by somebody else. I think that is a case which must be excluded.....

Shri T. T. Krishnamachari (Madras): It is not considered as falling into that Category.

Dr. Ambedkar: I do not know. My friend Mr. T. T. Krishnamachari will allow me to say that I have not slept the whole of last night. I have been reading Halsbury and a number of other books, as the subject is so complicated. Anson's is the only book I have which could give some guidance

and I shall pass it on to him. It was published in 1922 and probably it gives the best assistance in this matter. My hon. Friend will have his right to speak and here I am only expressing my tentative conclusion.

Shri Kamath: The Hon. Minister will have good sleep to night.

Shrimati Durgabai (Madras): What is the position in regard to the All-India

Nursing Council constituted under an Act of Parliament ?

Dr. Ambedkar: Probably that would not involve any disqualification. Now I come to membership of Advisory Councils or committees constituted under an Act of Parliament or appointed by a statutory corporation. Take for instance the Damodar Valley Corporation. As I said, I am not certain about it also. (*Interruption)* I am not advising any particular client. I am very sorry to say that, I am making a general statement. If the hon. lady is interested in the Nursing Council she had better go to a lawyer and obtain his advice.

Shri Sidhva: That is not fair.

Shrimati Durgabai: You said that Coal Mines Safety (Stowing) Act does not come under the disqualification.....

Dr. Ambedkar: I looked it up overnight and found out what the provisions were.

Then I come to membership of committees, Commissions or Councils or other similar bodies constituted by Government for specific purposes by resolution or order, for instance, membership of the Governing Body of the Indian Council of Agricultural Research, membership of the Fiscal Commission, membership of the Government Trading Enquiry Committee *(Interruption)* I do not want to hide anything—membership of the Special Recruitment Board, representatives or delegates to United Nations Organisation or any international conference or association. I feel rather doubtful about membership of committees, commissions or councils or other similar bodies constituted by Government for a specified purpose by resolution or by order.

As I have stated my view is that in certain cases Members of Parliament would not be affected. In certain cases they might be affected. As my friend Prof. Ranga said—and I whole heartedly agree with him—this question of disqualification by reason of holding an office of profit is one of the most important matters. It has been and could be a tremendous influence for corruption and therefore we have to proceed very carefully in this matter. In England I do not know what they do but I have found that they have no general law as such. Whenever they make a law under which they create a particular office, in that very Act they provide whether the holder of that office shall be deemed to be disqualified for being a Member of Parliament, so that no general theory is there. Each case is dealt with particularly and Anson's Vol. I gives quite a long list. There every Act is mentioned and the office it has created and whether the holder of that office under the particular Act shall continue to be a Member of Parliament or not. I am afraid we have therefore to be very cautious.

One thing I am prepared to admit, namely, that those Members who are already holding office, which, as I said, might lead to disqualification, if they have to give up their offices immediately, administrative difficulties might be created. The work might be held up and it might be possible and even desirable to have a short

measure removing the disqualification from the holders of those offices for the present, so that we would get sufficient time later on to consider what general principles we should adopt. If there is a certain amount of delay in carrying out the suggestion which I have made, we can rectify it by passing an Indemnity Act, giving it retrospective effect, so that all those who are holding offices today need not be in danger of incurring any such disqualification. I do not think that we can really rush into this matter and have a general clause exempting anybody and everybody without either proper consideration or examination. I admit that if the disqualification applied without any qualification to Members who are working on various committees, some difficulties might be created. If the House so desires I would be quite prepared to consider a small measure of one clause and bring it before the House to give it retrospective effect and also to add to it an indemnity clause, so that if there is any lacuna in the legal position a Member will not be deemed to have vacated his seat. More than that I am afraid I cannot do at this stage.

With regard to the omission of part-time offices from the Bill I think the reply that I have given, namely, that you have to be very cautious in extending the principle of exemption to holders of office, applies to them also. I may say that the original clause in the Ordinance was taken from the war-time Ordinance which was Ordinance LII of 1942. My friend Mr. Kamath will realise that it is perfectly legitimate to widen the principle in an emergency when there are so many offices to be filled-and the number of men available is so few that we have necessarily to go to Parliament to pick up Members to officiate on those occasions. But what is necessary in wartime and in an emergency should not be applied in normal times. That was the consideration which prevailed upon me in deleting the clause which originally found its place in the Ordinance.

Shri Kamath: Was it not the Law Ministry itself which drafted the Ordinance ?

Dr. Ambedkar: The Law Ministry can forget and also be forgiven. The Law Minister is not omniscient. I live to learn, and if I can learn from my friend Mr. Kamath I shall be only too grateful. This is all that I have to say.

Shri Kamath : *rose—*

Mr. Deputy Speaker: We have only three minutes to adjourn for Lunch. I hope the hon. Member would not take more than three minutes.

Shri Kamath; There are some legal and constitutional points which I have to make and I will take more than three minutes.

At the outset may I make it clear that in my judgement— I have learnt a lot from Dr. Ambedkar during Constitution making and I have much more to learn from him ; I wish to reciprocate the compliment—there is no need to rush or hustle this Bill through, because even if this Bill were passed by this House before this midnight, that is, of the 10th, it will not, constitutionally speaking validate the

membership of the Deputy Ministers and the Ministers of State; it will not remove the disqualification which they have incurred already.

Dr. Ambedkar; With your permission, Sir, I would just like to mention that there is nothing original in this point. It is borrowed from the view of the Patna High Court. But I find both my friend Mr. Tyagi and Mr. Kamath are making this point. The President is not the court ; the President may take a very different view from what the court may take.

Shri Kamath: The Constitution does not make that clear at all. It refers only to Cabinet Ministers, as Dr. Ambedkar said, and that was why the Ordinance was promulgated by the President. Sir, the next point is this.

Some Hon. Members: It is time for the House to rise.

Mr. Deputy Speaker: hon. Members are giving him a little more time ?

Shri Kamath: Because of the legal points in which my hon. Friend Dr. Ambedkar is interested .....

Dr. Ambedkar: I am interested only in getting the Bill through.

Mr. Deputy Speaker: The House wants to rise evidently. The House stands adjourned till 2-30.

The House then adjourned for Lunch till Half-Past Two of the Clock.

The House re-assembled after Lunch at Half-Past Two of the Clock. [MR. DEPUTY SPEAKER *in the Chair]*

Shri Kamath: Sir, the Law Minister is not here.

Shri Sidhva: The Minister of State for Parliamentary Affairs is there.

Mr. **Deputy Speaker:** Yes.

Shri Kamath: Oh, the Law Minister has come.

I am glad that my hon. friend has arrived in the nick of time. I am glad also that in the forenoon he admitted— casually, of course—that a mistake, constitutional though technical, had been committed in respect of this matter.

Dr. Ambedkar: I have not admitted any such thing at all.

Shri Kamath: He referred to the Patna High Court ruling and said that Mr. Tyagi and myself are taking a stand upon that ruling and that we need not go very deep into that aspect of the matter. He further went on to say that he is not interested in legal issues or legal points—he is interested in merely getting the Bill passed or rushed through, I do not remember what was the word he used. May I ask you, Sir, and the House, that if the Minister of Law is not interested in legal points who would be interested in legal points ?

Mr. Deputy Speaker: Leave that alone.

Shri Kamath: Sir, that concerns the right of the Members of this House. The Minister of Law is there and he says that he is not interested in legal points.

Dr.Ambedkar: Iam interested in the merits of the case.

Shri Kamath: Sir, legal points to a Law Minister at least—if he means to be a Law Minister in truth, in fact and in earnest—must be as much a case of merit as of law.

Mr. Deputy Speaker: What is the good of misunderstanding the Hon. the Law Minister ? He says, " So far as the law is concerned, leave it to me. Please tell me facts if there are any. "

Shri Kamath: May I ask on a point of right as a Member of the House whether if a Minister takes a particular stand, a Member cannot raise a point of privilege of the House ? I do not know what the future has in store for him ; he perhaps is thinking of some other portfolio. I do not know anything about reshuffling of portfolios but there are lots of reports in the papers. But I feel that it should not have been stated in the House that a Minister of Law is not interested in legal points.

Dr. Ambedkar: Parliament is not a Court.

Parliament (Prevention of disqualification) Bill

Mr. Deputy Speaker: Dr. Ambedkar.

Dr. Ambedkar : I find that Members have really travelled ground which is far away from the main proposition embodied in this Bill. I have been asked to explain how this doubt arose. In whose mind did it arise first ? I have been asked to explain how is it that in no other country such as Australia or Canada is any such legislation found necessary?

Well, with regard to the first point, I have no hesitation in saying that I myself felt doubts. I admit that, because notwithstanding many allegations that have been made, I was to some extent responsible for the framing of the Constitution. I have no hesitation in saying that I do not know of any Constitution in the world which can be said to be proof against doubt or against any kind of wrong understanding. Otherwise, if every Constitution was proof against doubt that would not have been these voluminous decisions of the various Supreme Courts in the different countries. Therefore, if I felt even as Chairman of the Drafting Committee that there was doubt in this matter, I am not ashamed to acknowledge it and there is nothing cavalierly in my behaviour when I say there is some doubt in this matter.

I shall explain why I felt there was doubt. My friend, Mr. Krishnamachari said that the phrase ' Council of Ministers ' was taken really from the Government of India Act, 1935 where the language used was ' Council of Ministers ' and that language was evidently borrowed by the draftsmen of the 1935 Act from the older Act where the words were ' Executive Council '. Now, I felt that if anybody

was to interpret the phrase ' Council of Ministers ' he would, no doubt, be justified in taking into consideration the circumstances in which that phrase ' Executive Council ' was used, and would be justified, in interpreting the intention of the phrase ' Council of Ministers ' by reference to the ' Executive Council '. Now, it is quite obvious that the ' Executive Council ' meant only members of the Executive Council of the rank of Ministers, because at that time there did not exist any such category of people as we call now by the names Deputy Minister or Minister of State or Parliamentary Secretary or Parliamentary Under Secretary. These are offices which have been created long after the Government of India Act, 1935 in its original form ceased to be in existence. I, therefore, felt that probably as we had especially not defined the word ' Minister ' or ' Council of Ministers ' in the article dealing with definitions, it would be open to anybody to suggest that the 'Council of Ministers ' was a phrase used on the same analogy as the ' Executive Council ' and therefore it would be open for anybody to say that these officers were not intended to be included.

That is the basis of the doubt which I felt, and I do not see any reason why Parliament should not be called upon to pass a law to place the matter beyond doubt. I do not think, therefore, that there is any unwarranted attempt on the part of the Government to force upon the Parliament a Bill the object of which is to remove doubt. I can point out many cases where Parliaments have passed Acts for the purpose of removing a doubt, and I do not think I am asking Parliament to enter upon any very extraordinary activity in doing the same with regard to this Bill.

With regard to the point raised by my friend, Pandit Kunzru, as to how the Governments in Canada or Australia or other Dominions are carrying on their affairs without any such legislation as is proposed now, I really want to know from him whether he thinks that the Constitution of Australia or Canada does not contain any such provisions as is embodied in Article 102, laying down disqualifications on the ground of holding an office of profit. I have had time only to refer to the Australian Constitution and there is a definite section there that a person holding an office of profit under the Crown shall not be qualified for being a Member of Parliament.

Pandit Kunzru: That is right.

Dr. Ambedkar: I do not know whether he had had the time to examine any law made by the Australian Parliament to overcome any difficulties which undoubtedly must arise by reason of that particular section in the Australian Constitution. I have not had the time to examine it, but I just cannot understand how,if the Australian Parliament does permit its Members to hold offices of profit and at the same time sit in Parliament and be Members, they could have done so without some kind of legislation. As I said, I have not had the time to study this,

but *prima fade* it seems to me one of the most impossible propositions that the Australian Parliament should be permitting its Members to sit in the Parliament, vote and take part in the proceedings and at the same time hold offices of profit, without a law such as the one proposed here, but I cannot say.

Now, I come to another point and it is this. My friend, Mr. Kamath, among the various points that he was seeking to make which on account of my limited intelligence I could not unfortunately follow, made one point which, I think, I could follow and which, I think, requires some kind of explanation. He has said that the draft of the Bill brings in also a member of the Government of any State, and his contention was that the draft was clumsy. I think that if he had read the clause carefully and also referred to clause I of Article 102, would have seen that the language is not only necessary but perfectly justified. My friend will realise that clause 2 of the Bill deals with two cases, one for being chosen as a Member, and one for being a Member, that is to say, continuing to be a Member. Now, it is proposed that not only a person holding an office of profit under the Government of India should not be disqualified from standing as a Member of Parliament, but similarly a Minister of State or Deputy Minister or Parliamentary Secretary or Parliamentary Under-Secretary who is holding that office in a State, he also, if he wishes *to* stand in the general election for membership of Parliament, should not be disqualified by reason of the fact that he holds that office in the State. That is the reason why holding an office of profit in a State has also to be brought in because the object of the Bill is to free both categories of people,— Ministers of State or Deputy Ministers or Parliamentary Secretaries or Parliamentary Under Secretaries, whether they are in the Centre or whether they are in a State—from this embargo. That is the reason why the words " under the Government of India or the Government of any State " have been brought in.

Shri Kamath: What about the point I raised ?

Dr. Ambedkar: I am coming to that.

The question may arise that if you permit the holder of an office mentioned in clause 2, in a State, to stand for election for Parliament, then he would also be entitled to continue to be a Member of Parliament after he is elected, because the words are " for being chosen, and for being ". My friend will see that that difficulty will absolutely disappear automatically by a constitutional provision contained in Article 101, because as soon as a Minister of State or a Deputy Minister or a Parliamentary Secretary or a Parliamentary Under-Secretary from a State is elected to Parliament, he will have to make his choice whether he would continue to be a Member of Parliament or whether he would continue to be a Member of the State Legislature. Consequently, although the provision is worded in this manner, it certainly would not create any kind of difficulty which he perhaps has in mind.

Shri Kamath: Under the Constitution, is it possible for the States or even for the Centre to have Ministers of State or Deputy Ministers who are not members of the Legislature concerned ? A Minister could be a Minister without being a Member of the Legislature, but so far as I can interpret the Constitution, a Minister of State or a Deputy Minister cannot hold that office without at the same time being a Member of the Legislature.

Dr. Ambedkar: For six months he can. So far as that drafting aspect is concerned, I think I have made the matter quite clear.

My friend, Mr. Krishnamachari, has been writing me on the point which I made that I have spent a great deal of time in studying this matter last night. I am sure about it that my labours would have been considerably shortened if the paper to which he referred just now. *viz.,* the Parliamentary paper, had been available to me. As I said, when I went, the Library was closed. I think that either the Library was closed or my friend ran away with the paper and did not allow me an opportunity of studying the paper.

With regard to the comment made by my friend, Mr. Kamath, that I slipped when I said that some portion of the Bill *viz.,* relating to Parliamentary Secretary and so on was a new thing and not contained in the original Ordinance, I do not think there is any ground for him to complain or any necessity for me to apologise. I quite agree that if a Member makes a slip, states wrong facts and these facts have the result of either misdirecting the House or misguiding it, there would undoubtedly be ground for doing so, but it was just a slip. Everybody knows that and I do not think therefore, that that was something which required complaint or comment. I can say that I have a less perfect memory than my friend, Mr. Kamath, has. I do not think that there is any point that has been left out by me without being answered.

Pandit Kunzru: Will the Hon. Minister tell us whether the Ministers of State belong to the Council of Ministers or not and whether they are appointed by the President.

Dr. Ambedkar: My hon. Friend asked me that question before. He knows very well, I think, that the position inside the Ministry is never regulated by law. It is always regulated by convention. It is the privilege of the Prime Minister to select any person to be a member of the Cabinet, although he may not be specifically designated as a Minister. It would be perfectly open to him to say " In my cabinet, I will include only certain Ministers. I will not include other Ministers but I would also include a Secretary of State or a Minister of State ". The internal arrangement of the Cabinet has always been, as the hon. Member knows, a matter of convention. If he wants I can state the position as it exists now but he must understand that that is only for the time being. The present Prime Minister may after the method of working of the Cabinet or if a successor comes he may

also adopt a different arrangement. There is therefore, no use.....

Pandit Kunzru: May I interrupt my hon. friend ? Does he take the phrase " Council of Ministers " to be synonymous with the Cabinet ?

Dr. Ambedkar: I do not. As I said in my opening speech this morning this is a phrase which is capable of double interpretation. I have seen observations by writers on Constitutional Law, where they have stated that even Parliamentary Secretaries or Parliamentary Under-Secretaries are included in the term Minister. There are also other writers who maintain that ' Minister ' is a narrower term. Therefore, as I said, it is very difficult to satisfy anybody or give a correct answer. This is a fluid situation and must remain fluid : that is the important part. There is no use pinning me down to give my hon. Friend a clear picture of how the Ministers and the Parliamentary Secretaries, all of them stand together *vis-a-vis* each other.

Pandit Kunzru: I am sorry I have failed to make myself understood. I am not criticising my hon. Friend. All that I am seeking to know is this. If the Council of Ministers does not mean the same thing as a Cabinet, then obviously it can be a wider body than the Cabinet.....

Dr. Ambedkar: Yes.

Pandit Kunzru: ..... and the Ministers of State and the Deputy Ministers can belong to it. No question therefore, arises with regard to their position.

Dr. Ambedkar: I need not dilate upon this. The hon. Prime Minister in a most authoritative statement said that in his opinion the Council of Ministers included everybody.

Shri T. Husain (Bihar): I want to ask one question. It is clear under the Constitution that a Minister can be a Minister for six months without being a Member of Parliament. That is mentioned in the Constitution itself. There is no such mention about the Minister of State or the Deputy Minister, or the Parliamentary Secretary or the Parliamentary Under-secretary. The Hon. the Law Minister told us just now that according to his reading of the Bill a Minister of State, a Deputy Minister, Parliamentary Secretary or Parliamentary under-secretary can hold office for six months without being a Member of Parliament. I have read the Bill again and I do not understand how the Hon. Minister came to this conclusion. Would he explain ?

Mr. Deputy Speaker: It is not absolutely germane to this Bill. The hon. Member may look into the matter at leisure.

Dr. Deshmukh: Sir, one point may be made clear, which is on a matter of fact, *viz.,* whether Deputy Ministers are appointed by the President. This is a matter of concrete fact and probably the Hon. Minister may be able to reply.

Mr. Deputy Speaker: How is it necessary in this connection ?

Dr. Ambedkar: Surely, they are appointed by the President :who else call

appoint ?

Mr. Deputy Speaker: The question is:

" That the Bill to make provision in regard to certain offices of profit under Article 102 of the Constitution, be taken- into consideration. "

The motion was adopted.

Shri Tyagi: I beg to move:

" That in the heading of clause I, after the words ' Short title ', the words ' *and commencement '* be inserted. "

It is a very simple amendment and I hope the Doctor will accept it.

Dr. Ambedkar: Perhaps what my friend Mr. Tyagi has noted is that there is no clause stating the commencement. Generally a Bill has a clause saying that the Bill comes into operation from such and such a date. This clause does not exist here, and he thinks there is a lacuna which ought to be filled. But may I submit that under the General Clauses Act, where a Bill does not contain such a clause it is presumed that it comes into operation immediately after the signature of the President.

Mr. Deputy Speaker: He wants to push the date to 26th January, 1950.

Dr. Ambedkar: It is unnecessary so long as the Ordinance is there.

5
MOTION FOR ADJOURNMENT

Shri Gopalaswami: May I just point out that Mr. Chamberlain was not on a question of motion for adjournment of debate ?

Pandit Kunzru: Well, I think Dr. Ambedkar relying on the reply given by Sir N. N. Sircar on the basis of Mr. Chamberlain's reply came to the conclusion that in a matter like this there was no essential difference between a demand for information and a demand for discussion. The word used by Sir N. N. Sircar in his reply was " discussion " and that is the word that my Hon. friend Dr. Ambedkar relied on.

The Minister of Law (Dr. Ambedkar) : I should like to say just one word with regard to the comment of my hon. friend on the reply given by Mr. Chamberlain and his attempt to establish a sort of analogy between the position which existed when that question was put and the position that will arise under article 371 of our Constitution. I should request him to bear in mind the essential distinction that exists between our Constitution now and the Government of India Act, 1935. That distinction is this, that while Parliament did enact the Act of 1935 and transferred certain responsibilities to the people of India, they never failed to emphasise time and over again, that the ultimate responsibility for the good Government in India rested with Parliament, and therefore, to the extent that the

power was reserved of giving directions it was really responsible for maintaining good Government ; while under our Constitution we have given over the power of maintaining good Government to our States and only in some cases we have reserved to the Centre certain powers of direction. That distinction has to be borne in mind.

Pandit Kunzru: I entirely disagree with my hon. Friend Dr. Ambedkar, not with regard to the general point that he has raised, but with the construction that he has put on article 371. As my hon. friend pointed out the other day, this article 371 does not apply to States in Class A. It applies only to States in Class B, and why ? Why was this article 371 inserted in the Constitution with reference to States in Class B only ? It was inserted in order to ensure good Government there.

6

SOCIETIES REGISTRATION (AMENDMENT) BILL

Shri Sidhva (Madhya Pradesh): This is a Bill which I had moved during the last session. The Hon. the Law Minister (Dr. Ambedkar) told me that he would like to take the opinion of the States. I would, therefore, like to know, before I formally move this Bill, as to whether the Opinions of the provinces have been received. If not, I would like to have this Bill confined to the Centrally Administered Areas.

The Minister of Law (Dr. Ambedkar) : Sir, in accordance with the promise that I gave when my. friend Mr. Sidhva moved his Bill, that in view of the fact that this matter fell under the Concurrent List and according to the Standing Orders of the Government of India, it was necessary to consult the States before undertaking legislation, my Ministry had addressed a letter to the various provinces to ascertain their views with regard to the proposed enactment of a law as proposed by my friend Mr. Sidhva. I am sorry to say that on account of the pre-occupation of the various States, the replies of all of them have not been received as yet. I have received, however, replies from two States in Part A and some of the States in Part C.

With regard to the States in Part A, I have received replies only from Madras and Punjab and I am sorry to say that both of them are opposed to the Centre meeting such a piece of legislation. The Madras Government have said that they themselves have under consideration an exhaustive and comprehensive piece of legislation to deal with the points raised in this particular Bill. The Punjab Government have said that they realised the necessity of having a penalty clause such as the one proposed by Mr. Sidhva, but they say that they themselves have recently enacted a law imposing such a penalty and so far as that particular province is concerned, no such legislation is necessary.

With regard to the States in Part C, the position that they have taken is this : that they have no such problem for the moment on hand. Some of them say that there are no such societies existing within their jurisdiction. Others have said that the law which my friend Mr. Sidhva seeks to amend has been very recently introduced within their area in the year 1949. There are no societies and there is as yet no experience to suggest whether any societies have violated the provisions of the Bill. That is the position as revealed by the replies given by the various States to which this communication was addressed. Some of the other important States such as, for instance, Bombay, U.P. and Madhya Pradesh have not replied. This is a matter placed in the Concurrent List and it is desirable that we should have the reaction of most, or the majority of the States in Part A before the Centre can undertake this legislation.

As I said last time, personally I do not think that any one could really dispute the position taken by my friend Mr. Sidhva that if the provisions of this Bill have to be effective, it is necessary to have some such penalty clause. I agree with him. But my point is this that it is desirable to carry the majority of the States in making this legislation and as they have not as yet replied, personally I would have very much preferred that this Bill was either withdrawn or held back on the assurance that the Centre will grapple with the situation as and when time and circumstances permit.

Shri Sidhva; Sir, in view of the statement made by my friend Dr. Ambedkar that he is personally in favour of this Bill and that as this subject is in the Concurrent List he would like to have the opinion of all the important States, I would like to hold over this Bill. I cannot withdraw the Bill in any case. It is an important Bill. I know what is happening in the various societies. Therefore, I would request you to allow me to keep this Bill alive. I shall not move it now.

Mr. Speaker: If no motion is made this time, it will automatically be kept alive under the rules.

7

ARMY BILL

The Minister of Defence (Sardar Baldev Singh): I beg to move.

"That the Bill to consolidate and amend the law relating to the Government of the regular Army, as reported by the Select Committee, be taken into consideration. "

Mr. Speaker: Hon. Dr. Ambedkar.

The Minister of Law (Dr. Ambedkar): If other hon. Friends do not want to speak, I thought I would like to reply to the two points raised by my hon. friend Pandit Kunzru because they have a constitutional aspect.

Mr. Speaker: I would give him precedence.

Dr. Ambedkar: My. hon. Friend Pandit Kunzru, in the course of his speech on

the motion, raised two points. As they refer to the constitutional aspect of the matter, I thought that it may be appropriate that I should deal with them rather than leave them to be dealt with by my hon. colleague.

The first point was that clauses 4 and 5 of the Bill were inappropriate in view of the fact that they made separate mention of the Forces in Part B States. I will take these two sections separately.

With regard to section 4, I think my hon. friend will agree that under the scheme of this Act, there is a distinction to be made between what is known as the regular Army and Forces which do not form part of the regular Army. My friend will see that the regular Army is defined under item 21 of section 3 which deals with definitions. For instance, there are what are called Assam Rifles, Bhil Corps and several other units which may be mentioned as illustrations which do not form part of the regular Army. As the Act principally applies to the regular Army, it is necessary to provide for an eventuality where the provisions of this Act would have to be extended and applied to units which are not part of the regular Army. That is the purpose of section 4. Section 4 says .....

Pandit Kunzru : Are these Forces Part B States Forces ?

Dr. Ambedkar : I am coming separately to Part B States. So far as section 4 seeks to apply the provisions of this Act to units for the moment other than those referring to Part B States, I do not see that there can be any valid objection to the provisions contained in that particular section.

With regard to section 5 which deals with Part B States, my hon. Friend's contention was that this was inappropriate, and also the latter part of section 4 which made mention of Part B States. The answer to that question is this. My hon. Friend will remember that in the earlier part of the Constituent Assembly, the position was that the States in Part B which were then called Acceding States, had been given power to raise and to maintain independent Forces of their own. If he has got a copy of the original draft of the Constitution, he will see item 4 on page 189 and he will also find that I took objection to that provision. I did not want that any particular unit under the Union should have a right to raise and to maintain troops. I was glad that my contention prevailed, and that part of the entry was deleted. So that, the right to raise and maintain troops under the Constitution exclusively belongs to the Union. Although this position was accepted, it did not remove altogether the difficulty.

As my hon. Friend well knows, there were certain covenants that were entered into between the Government of India and the various Indian States mentioned in Part B. One of the terms of the covenant was that the States which had certain Forces maintained and raised by them should be continued to be maintained by them and that what should be prevented was the raising of new troops. The existing units were to be continued. Then arose the question what is to happen to

the existing units: were they to be independent or were they to be subordinate to the military authorities of the Government of India ? A compromise was entered into which is mentioned in article 259 to which he referred. Therein it is provided that although the troops already raised were to continue, they were to be subject to any law that Parliament might make. Now, it was possible for Parliament to make a law declaring that for all purposes the troops raised already by the States in Part B would be regarded as part of the regular Army of India. That is, of course, the intention. But, as I said, these matters were governed by the covenant. Although the Rajpramukhs who represent the States in Part B were prepared to accept the provisions contained in article 259, that is to say, confer the power on Parliament to make such a law, they still desired that they should continue to be the Commanders-in-Chief of those Forces and that their position ought to be safe-guarded. These things arising out of the convenants which, as I said, had already been entered into and on the basis of which accession was made, had to be respected. I hope and trust that a time will come when the States would voluntarily agree to Parliament exercising complete jurisdiction, effecting complete assimilation between the Indian regular Army and the Forces raised by them. Therefore, what we have to do today is to effect a sort of a compromise. These sections 4 and 5 really represent the best compromise that we can make.

Pandit Kunzru : If I may interrupt my hon. friend, he has dealt with a very wide question. My criticism was limited to one point only. Why has not the power conferred on Parliament by article 259 of the Constitution been used to extend the Army Act to Part B States Forces ?

Dr. Ambedkar: That is what I am dealing with.

Pandit Kunzru: I did not deal with the wider aspect of the problem on which my hon. friend has dwelt so far.

Dr. Ambedkar: But, the wider aspect is the real aspect. The whole question is governed by the covenants which were entered into before the Constitution was made, unless, of course, my hon. Friend's position is that covenant or no covenant, agreement or no agreement, understanding or no uderstanding, wherever Parliament has got power, Parliament should exercise it. That would be a different position.

Pandit Kunzru: Surely my hon. friend knows that on the 24th January the Unions of States and the State of 3-00P.M. Mysore issued a proclamation accepting the Constitution and saying that the agreements that were inconsistent with the provisions of the Constitution were invalid.

Dr. Ambedkar: Yes. That may be so. As I said we are following really an understanding. Before I go to that, I would like to draw his attention to the fact that he has not adverted to an important point of clause 2, *viz.,* part (b) of clause

2 which says:

" persons belonging to the land forces of a Part B State, when such persons are attached to any body of the regular Army for service, or when the whole or a part of the said forces is acting with any body of the regular Army or is placed at the disposal of the Central Government in pursuance of a notification under section 5; "

Therefore, it is not altogether as though this law places the Forces in States in Part B in a separate water-tight compartment. When the Central Government issues a notification under clause 5, then as soon as the notification is issued, this Act would apply to that part of the Army in Part B States automatically. He will also see that under clause 5 there is power given to the Central Government to see that any particular Part of the Forces in Part B shall for the purposes of this Act be treated as attached to the Indian Army. That also is a direct power of intervention so far as attachment of certain Forces is concerned.

My friend asked why we have not taken direct action. The answer is, to my mind, obvious. He will realise that the Forces in States in Part B were raised under their own individual laws and were not raised under any Act of the Central Government. The condition on which enrolment was made in Part B States materially differed from the rules and conditions regarding enrolment of personnel to the Indian Regular Army. One important difference was this that the person enrolled in the Indian Regular Army was bound to save anywhere but with regard to a person enrolled in Forces belonging to the Part B States, such a conditon was not there. I think it is in everybody's knowledge that their conditions of service were confined to their States and the widest circuit of their service was India. It was during the war that special provision was made when these troops were placed under the control of the Government of India with the condition that they may be used anywhere. It was the Government of India who bore the expenditure and sent them to battle-fields outside India. That being so, it does appear to be somewhat difficult, harsh and illegal even to compel a man who has been enrolled under different set of circumstances to come and be a part of the Regular Army. Consequently, the fact that we have had convenants with the States forces as to adopt what might be regarded as a *via media* and I do not think that from either point of view any objection could be raised to the provisions contained in clauses 4 and 5.

Now, I come to the other point raised by him, *viz.,* clause 70 which deals with the authority of the Court Martial to try what are called civil offences. It is quite true that offences against civilians should be tried by civilian courts and not by military courts but there are considerations which weigh on the other side and which support the provisions contained in this Bill. Let me give first some of the difficulties which one has to face in deciding upon an issue of this sort. Suppose

an offence is committed by a solider within the barracks where the army is stationed, which should be the forum, the Court Martial or the Ordinary Magistrate's Court ? Let me point out another difficulty and it is this. An offence is committed against a civilian but that offence is such that while it involves the breach of an ordinary criminal law at the same time, it involves what is called a breach of the rules of discipline which every soldier must follow. What would be the appropriate forum in a case like this where the act committed by a soldier is equally an offence under the ordinary criminal law and is also a breach of discipline under the Army rules ? Take another illustration. Supposing an army is about to move from one place to another : every soldier belonging to that army must move. Then suppose we made a provision that every offence committed by a soldier must be tried by a civilian court. It might be that a recalcitrant solider who does not want to move with the troops to another station deliberately gets himself involved in some kind of a crime in order to stay back so that the civilian judge may try him. Should that be allowed ? If my friend himself were to exercise his mind on the subject he would find many other difficulties with which he would be confronted if he came to the dogmatic conclusion that all offences committed by a soldier against a civilian must be as a rule tried by a civilian court.

Pandit Kunzru: That was not my contention.

Dr. Ambedkar: Therefore, I say there can be no question of having any dogmatic opinion about this question. None can say that all such offences must be tried by the Military Court nor can anyone say that no such offence shall be tried by a civilian court. Consequently the Bill makes certain compromises which are in keeping with the necessities of the case. The trial of offences committed by a soldier which are to be tried by a military court are limited in number. They are murder, culpable homicide, etc.

Pandit Kunzru : By a military court or a criminal court ?

Dr. Ambedkar: By a criminal court. All others may be tried by court martial.

In connection with this there are other provisions in the Bill which must also be taken into consideration. They are clauses 125, 126 and 127. The discretion or the jurisdiction of the courts martial to try offences which are left to them is not absolute but it is governed by the provisions to which I have referred, namely, the military court under clause 125 may decide whether they want to try the offence. If the civil courts think that the offences should be tried by them they should under clause 126 obtain the permission of the Government of India and if the permission is granted they can proceed to try the offence. There is a further provision which in a sense is rather an extraordinary thing, namely, " Successive trial ". If it was found that the offence was a grave or serious one but the court martial which was permitted to try the offence let off the man with a light punishment, then subject to the permission granted by the Government of India,

the man could be tried twice. Having regard to the difficulties mentioned, namely, of allowing civil courts to try all offences and having regard to the fact that there are the provisions contained in clauses 125 and 127, I do not envisage that there is likely to be far more cases which can be described as containing miscarriage of justice. I think we have taken enough precaution to prevent that sort of thing happening and therefore I submit, that having regard to these provisions and having regard to section 70 there can be no objection to this part of the Bill.

I might also mention—1 think reference was made to it by somebody—that clause 70 of this Bill is virtually a repetition of section 41 of the British Army Act. There also they have a similar provision. In the U.S.A. the provisions are more extensive. After all we have to look at this matter from the point of view of the offender, not so much from the point of view of the complainant. In all these cases the offender would be a solider and the question is whether the soldier who is accused of any particular offence and would have been tried by a civil court, if he had not been a soldier, would not get justice at the court martial.

My friend said that the men who sit in the court martial are not trained lawyers. I do not know but I can say from my experience that I have met some Judge Advocates-General who were as good as the lawyers whom we meet in courts, if not better. However, after all a soldier cannot expect to get better justice for having committed civilian offences than he is ordinarily expected to get when he commits a military offence. If he gets the same justice as he gets in the civil courts I do not think there need be any cause for complaint. My friend need not have much confusion about it. I do not think that his criticism is well placed.

Shri S. N. Sinha: What are those cases in which the criminal courts and court-martial have got concurrent jurisdiction ? Under clause 125 the choice has to be exercised.

Dr. Ambedkar : I cannot say. That requires some kind of exhaustive compilation. There are undoubtedly some offences which come under the jurisdiction of both military and civil courts.

Shri S. N. Sinha: My contention was that clause 70 of this Bill alone gives jurisdiction to the ordinary criminal courts in respect of specified cases.

Pandit Kunzru: There is this doubt in the minds of many hon. Members. If my hon. Friend Dr. Ambedkar will turn to clause 125 he will find that the opening words are: " When a criminal court having jurisdiction is of opinion .....". The question is what do the words " having jurisdiction " mean. Do they mean having jurisdiction under the ordinary criminal law of the land or jurisdiction under this Bill ? This is the question that troubles many hon. Members. If it is said that these words mean having jurisdiction under this Bill.....

Dr. Ambedkar: Under the ordinary law.

Pandit Kunzru: Then obviously clauses 69 debars the ordinary criminal courts

from dealing with any criminal cases except those which fall under section 70. That is the real question.

Dr. Ambedkar: " Civil offence " has been defined on page 2 of the Bill as meaning " an offence which is triable by a criminal court " as distinct from a court martial.

8

PART C STATES (LAWS) BILL

The Minister of Law (Dr. Ambedkar) : I beg to move for leave to introduce a Bill to provide for the extension of laws to certain Part C States.

Mr. Speaker: The question is:

" That leave be granted to introduce a Bill to provide for the extension of laws to certain Part C States. "

The motion was adopted.

Dr. Ambedkar: I introduce the Bill.

The Minister of Law (Dr. Ambedkar) : I beg to move **:**

"That the Bill to provide for the extension of laws to certain Part C States, be taken into consideration. "

It is perhaps necessary that I should offer to the House some explanation as to why this Bill is restricted to certain Part C States. The position is this, that we have altogether about ten Part C States mentioned in Schedule I of the Constitution. Those ten States fall into three groups. There are Coorg, Ajmer and Delhi which were Chief Commissioners' Provinces now designated as Part C States, and which had come into existence long before the Constitution. Consequently, so far as these three States were concerned, the question of the extension of Central laws does not arise because they applied at the time when they were enacted.

Then there is the second group of Part C States which are Bilaspur, Himachal Pradesh, Bhopal and Cutch. With regard to them, it was only last year that this Legislature passed a law extending the Central Acts to them. This Bill is confined to three Part C States, namely, Vindhya Pradesh, Tripura and Manipur. They have to be separately dealt with because they came into existence as Part C States after the 1949 Act was passed. Consequently, this measure is restricted to these three Part C States. I might mention that although all the laws that were extended to Part C States by the Act of 1949 are extended to Vindhya Pradesh and Tripura, some exceptions have been made with regard to the State of Manipur. All the laws that have been applied previously or are applied by the present measure to Vindhya Pradesh or Tripura are not applied *proprio vigore* to Manipur. It is said that Manipur is largely settled by what are called the tribal people whose civilisation and whose manners and modes of life are considerably

different from those who are living in what is called the ' settled area '. Consequently it would create a great deal of disturbance if all the enactments were extended to Manipur and therefore a Schedule has been added as to what enactments will not apply to Manipur. Similarly, while the Indian Penal Code is applied to Manipur, there are two sections of it which are sought to be applied, with a certain modification.

I hope the House will see that there is nothing very complicated about this measure and accept it.

Mr. Deputy Speaker: Motion moved:

"That the Bill to provide for the extension of laws to certain Part C States, be taken into consideration. "

Pandit M. B. Bhargava (Ajmer) : I have to make a few observations in respect of this Bill. So far as the extension of any Central laws to the States referred to by the Hon. the Law Minister is concerned, I have got nothing to say. But there is one clause, namely, clause 2 in this Bill which lays down that it will be open to the Central Government by notification in the *Official Gazette,* to extend any Provincial enactment to any of these States in Part C, subject to such modifications and restrictions as may be laid down in the notification..... I have not the least doubt that if all these extended laws are ever questioned before a competent legal authority, this legislation will not stand the scrutiny of the judicial court and will be declared *null* and *void.* I would, therefore, respectfully request the Hon. the Law Minister to consider the legal position before proceeding further with this piece of legislation.

Dr. Ambedkar: I am glad my hon. Friend raised this question. I did not bother to it because I thought that the section was so simple that it should not require any explanation. However, now that the question is raised, I think it is desirable that I should explain the position. In going through the merits of this particular clause, there are certain aspects of the case which have to be taken into consideration. The first is this, that in most of the Part C States, except Coorg, there are no local legislatures which could be entrusted with the duty of passing such local laws as may be necessary for their local administration. It is, I think, equally clear and my hon. friend, himself admitted the matter that the only other alternative is for Parliament to sit here and to make detailed laws for the local administration of these Part C States, and the question that has to be considered is this, whether in view of the time which is available to Parliament—and every one knows how difficult it is for this Parliament to get through some of the most essential measures necessary for carrying on the Central Administration—to find time which could be devoted in a meticulous consideration of the details of a local legislation. We are, therefore, so to say between two difficulties ; one is that there is no local legislature and the other is that Parliament is not in a position to

engage itself in passing local laws for Part C States. What is, therefore to be done in a situation of this sort ? The only thing that could be done seems to be to give the Government of India the power to extend certain laws made by Part A States or other Part C States to be applied to Part C States with such modifications as may be necessary by reason of local circumstances and local difficulty. I do not see that there is any other way open to provide for local legislation for Part C States. Of course, it would be possible for Parliament at some stage to create local legislative councils for Part C States and to endow these local legislative councils with the power to make laws for their local administration but so long as Parliament has not done it, I do not see that there - is any *via media* except what is suggested in this particular Bill, and, therefore, apart from the question whether this is the proper mode of doing the legislative business which Part C States would be entitled to do, from a practical point of view, I do not see that there is any other method open.

My friend put forth a point of criticism that this power has been exercised by the Centre without even consulting such local advisory bodies as exist in Part C States. I do not know much about that aspect of the matter, because as my hon. friend knows the administration of this particular matter rests with the Home Ministry and I have no doubt about it that the Home Ministry does consult these bodies. If they do not, I have no doubt that they will adopt the suggestion made by my hon. friend.

Then, I come to the constitutional question which my hon. friend, has raised, namely, that this will be delegated legislation. Any application of any law made by Part A or Part B or Part C States extended to Part C States would be a performance of what might be called a delegated legislation, the Parliament delegating the executive to apply that legislation. My hon. Friend referred to the decision of the Federal Court. No doubt there is the decision of the Federal Court. All I want to say is this, that we have not had as yet the decision of the Supreme Court; we are waiting for it, because, with all respect to the Federal Court, the view that the Government of India takes in this matter is that decision was not a correct decision, and with all respect to the Federal Authority, that is still the view that we hold. I might point out to my hon. friend that this activity of the Government of India to employ what is called delegated authority to legislate is not a new thing. It has been in existence practically from 1912 and he will know that we have a law for the purpose of permitting the Central Government to extend the laws made in any part of India to the Province of Delhi with such modifications as the Central Government may make. From 1912 up to the date of the decision of the Federal Court, there has not been in existence a single decision of any Court in India which has questioned the legality of that action taken by the Government of India. I might also tell my friend that many cases

have gone to the Privy Council from this country and the Privy Council itself has never questioned the validity of this. I, therefore, hope that when on a proper occasion the matter comes before the Supreme Court, the Supreme Court will *de novo* examine the position and, as I hold the view, the Supreme Court will not feel itself bound by the decision of the Federal Court, although a good many of the personnel of the Federal Court is the same as the personnel of the Supreme Court, but the court certainly is a different court. Therefore if my friend likes it, I do not mind saying that we are making a venture. We are hoping that the stand that we take and we have taken so far and which has not been questioned by any court during the last 25 years is the correct stand. If the Supreme Court when it comes to deal with the question comes to a decision different to what our point of view is we shall then consider the matter. For the moment it is our view that there is no objection to delegated legislation at all. Parliament is quite supreme either to legislate itself or to ask any other agent on its behalf to exercise that legislative power. I do not think that that matter can be questioned. I do not think that there is any other point raised by my friend which I have not dealt with.

Mr. Deputy Speaker: Is it open to the Parliament to say that the Government may pass such laws as are necessary ?

Dr. Ambedkar: They can say so, that Government is left with the power to frame rules.

Mr. Deputy Speaker: Can they give a blank cheque in regard to all the matters referred to in the list ?

Dr. Ambedkar: It may do so under proper safeguards. No Parliament will give a blank cheque to the executive: it can certainly ask the executive to fill in the blanks and I do not think there can be any difficulty about that.

Shri T. T. Krishnamachari (Madras): So far as the Constitution is concerned the only operative articles are 240 and 242. We have made a special provisions in regard to Coorg. As you will see, Sir, Coorg has been taken out of the operation of the particular Bill before the House. So far as the Constitution is concerned there is no specific direction in this regard. So it is left practically to the free will and pleasure of the Parliament. The *modus operandi* to be followed is the only thing that can be under dispute, whether the *modus operandi* should be that all these enactments should form part of the schedule attached to this Bill, with such powers as we normally give to the executive by means of what is called delegated legislation, to make rules, etc. or the procedure that is now followed. As the Law Minister has mentioned, this procedure has been followed over a period of years and I am not sure, in the absence of any express instruction to the contrary in the Constitution, how this can be held to be void by any court. So far as delegated legislation is concerned the exact quantum, nature

and extent of delegation is not defined by any legislature in the world. It varies from time to time. In the absence of any provision so far as Part C States are concerned which expressly prohibits enacting any type of law that Parliament likes and to delegate such powers as it wants to the Central Government, there could be no objection at the present stage to the Bill being passed by this House.

Mr. Deputy Speaker: The general laws are enacted in a Bill-—and power is given to the Government to fill in the details and make the rules.

Dr. Ambedkar: The provision in the Bill is that there are laws already existing on any subject. The laws are already existing in certain Provinces.

Mr. Deputy Speaker: Is it not for the Parliament to choose which law is to be applied?

Dr. Ambedkar: If Parliament wants it can do it but Parliament entrusts the power to the executive, which has to choose from the existing laws.

ShriT.T.Krishnamachari: The Committee on Ministers' . Powers which was constituted by the House of commons to go into this particularly vexed question, what was called Star Chamber Legislation, in the thirties, indicated that it would be preferable for the Government of the day to give an outline as to how far they are going to use the delegated power and that is why we are following so far as ordinary legislation is concerned the practice of saying that without prejudice to the generality of the foregoing powers such and such shall be rule-making power of the Government. Therefore, there has been no express limitation to the extent and scope of delegated legislation in any legislature in the world so far as is known.

Mr. Deputy Speaker: They have not even indicated the subjects here.

Pandit M. B. Bhargava: The Law Minister was pleased to remark that before the judgement of the Federal Court there was no decision laying down anything contrary to the practice prevalent. I would like to point out that the judgement of their Lordships of the Federal Court is itself based upon the Privy Council decision reported in 1945 Federal Law Journal, page 1. It is on the basis of that authority that the Federal Court has laid down the proposition.

I would also like to know whether the matter is before the Supreme Court and whether a decision of the Federal Court does not bind this Government until and unless it has been superseded or set aside by the Supreme Court.

Mr. Deputy Speaker: Is there an appeal from the Federal Court to the Supreme Court ?

Dr. Ambedkar: No. The Federal Court has ceased to exist.

Babu Ramnarayan Singh (Bihar): Could the Hon. Minister cite the article of the Constitution in this regard ?

Dr. Ambedkar; The Parliament has plenary powers. It can do anything with the legislative power that it possesses. It can use it itself or ask someone else to use

it on its behalf in certain circumstances. There is no prohibition imposed on it.

Shri Hossain Imam (Bihar) : I should like to have some light thrown on the fact that this is not a peculiar situation that has arisen just now. The Chief Commissioners' Provinces are administered by the Centre. We can extend the power of the Chief Commissioner by notification as was the practice in the past or it can be done by means of legislation as may be done now. But the question is who is to be empowered ?

Are we going to empower the executive, judiciary or the Central Government ? The power should not be distributed between all the three. Sub-clause (3) of clause 3 says:

" For the purpose of facilitating the application in the said States of any such Act or Ordinance as aforesaid, any court or other authority may construe the Act or Ordinance with such alteration not affecting the substance as may be necessary or proper to adapt it to the matter before the court or other authority."

It shows that we have not made up our mind as to who is to have these powers. I can understand the Central Government being empowered during the interim period. Who is the authority.....

Dr. Ambedkar: Any authority. It is an adaptation: it is not adoption. We have passed so many adaptation laws in this House.

Shri Hossain Imam: This adaptation is done by the Central authority or the Legislature. Here the adaptation is left free to an unspecified number of people. The authority is nowhere defined in this legislation—whether it means the Chief Commissioner or the Chief Secretary .....

Dr. Ambedkar : Whoever will have to administer the law will have to adapt it.

Shri Hossain Imam: We are doing something to which we have not given proper consideration. The Bill has been introduced late in the session. It would be far better if the Government withdrew the Bill now and have some kind of Ordinance after the session has ended, if they want to have something of this kind. Otherwise a well considered law should be brought forward in which every kind of power should be given. It would be better to have an Ordinance rather than a Bill of this nature, where there are loose ends. I would, therefore, request the Hon. Minister to reconsider the matter.

Dr. Ambedkar: In view of the fact that my hon. Friend 5-00p.m. is prepared to permit Government to enact this measure in the form of an Ordinance, obviously, it means that he cannot have much objection to the merits of the thing. Otherwise, I do not see what objection he has for enacting this measure.

Shri Hossain Imam: I was only suggesting. This Ordinance can last until six weeks.....

Dr. Ambedkar: From the commencement of Parliament.

Shri Kamath (Madhya Pradesh): Six weeks after the commencement of the next session of Parliament.

Dr. Ambedkar: We do not know what will happen. I cannot say when Parliament will be called. We do not want to be left in the lurch after having made an Ordinance.

Shri Kamath: How can that be ?

Dr. Ambedkar: This suggestion is a very impracticable suggestion.

Besides, so far as this aspect is concerned, as I have said, we have got a precedent. We have got a similar law with regard to Delhi. We have got a similar law with regard to Ajmer-Merwara, the Ajmer-Merwara Extension Act of 1947. If these two Acts are not so bad as my friend tries to depict them, I cannot understand why there should be any objection to this measure. It may be, if there was time, I could suggest to the House that at a later stage the House may consider the procedure which has been recently adopted in the House of Commons which consists of having a Standing Committee of the House to examine such delegated legislation and to bring to the notice of Parliament whether the delegated legislation has either exceeded the original intention of Parliament or has departed from it or has affected any fundamental prinicple. This is a matter which we may take up independently. I cannot understand how now after long practice, anybody can object to what is called delegated legislation.

Mr. Deputy Speaker: The question is:

" That the Bill to provide for the extension of laws to certain Part C States, be taken into consideration. "

The motion was adopted.

Shri Hossain Imam: May I ask the Hon. Minister to explain why—he has not explained in the Statement of Objects and Reasons—the age of consent has been reduced ?

Mr. Deputy Speaker: He has already stated.

Dr. Ambedkar: The changes with regard to Manipur have been made as a result of a conference which was held between the representatives of the Home Department and the Chief Commissioner in Manipur. It was he who suggested that these changes must be made if the Central legislation is to be extended.

Mr. Deputy Speaker: It is a little premature to apply this section to these areas.

Shri Hossain Imam: The age of consent has been reduced.

Mr. Deputy Speaker: Possibly it goes back to the age of consent under the old law, and all these reforms are not sought to be extended to that area.

Clauses I to 4 were added to the Bill. The Schedule was added to the Bill. The Title and the Enacting Formula were added to the Bill.

Dr. Ambedkar: I beg to move: " That the Bill, be passed. "

Mr. Deputy Speaker: Motion moved. " That the Bill be passed. "

Prof. Ranga (Madras) : I am glad that the Hon. Minister has given us this information that in Parliament they have thought of the device of establishing a Standing Committee to study these things as and when they come up before them and advise Parliament, as a sort of a watchdog on behalf of Parliament. Unfortunately, the Hon. Minister has not given •us any assurance that similar efforts would be made in this House. I do request him to take steps at the earliest possible opportunity to see that this Standing Committee does come to be established by our Government.

Dr Ambedkar: I will bear that in mind.

Mr. Deputy Speaker: The question is: " That the Bill be passed "

The motion was adopted.

The House then adjourned till a Quarter to Eleven of the Clock on Wednesday, the 12th April, 1950.

REPEALING AND AMENDING BILL

The Minister of Law (Dr. Ambedkar) : Sir, may I have your permission to take my Bill out of turn ? They are very small ones.

Mr. Deputy Speaker: Yes. **Dr. Ambedkar:** I beg to move:

" That the Bill to repeal certain amendments and to amend certain other enactments, be taken into consideration."

The purpose of the Bill which is brought in annually for the purpose of pruning the Statute-book of what is called the " dead wood " and of amending and making good certain errors discovered in certain enactments. I do not think it necessary for me to say anything more in support of the motion I make.

Mr. Deputy Speaker: Motion moved:

" That the Bill to repeal certain enactments and to amendments and to amend certain other enactments, be taken into consideration."

Shri Himatsingka (West Bengal) : What I would suggest to the Hon. Minister of Law is this. Would he please take steps to have all the laws that are in force printed in a book form so that one may follow what laws are in-existence and what not? At present it is so very difficult. We are passing so many laws in a day that it is very difficult for anyone to know or find out what the law is. Therefore, will he take my suggestion into consideration and have the laws in force up to 1949 printed?

Dr. Ambedkar: That is being done.

Mr. Deputy Speaker: The question is:

"That the Bill to repeal certain enactments and to amend certain other enactments, be taken into consideration."

The motion was adopted. *Clauses I to 4 were aded to the Bill. The First and Second Schedules were added to the Bill. The Title and the Enacting Formula were added to the Bill*

Dr. Ambedkar: I beg to move: "That the Bill be passed"

Mr. Deputy Speaker: The question is: " That the Bill be passed. " The motion was adopted.

9

REPRESENTATION OF THE PEOPLE BILL

[MR. SPEAKER *in the Chair]*

The Minister of Law (Dr. Ambedkar): May I, Sir, with your permission make the motion that stands in my name in the Order Paper for today ? I could not do it this morning because printed copies of the Bill were not available in the morning. As the House takes objection to giving leave for introduction without copies of the Bill being there, I thought I should wait.

Mr. Speaker: Yes ; he may make that motion. I was told that the matter was not to be taken up. That is why I passed over that.

Dr. Ambedkar: Because, I said that printed copies were not available.

I beg to move for leave to introduce a Bill to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of election to, the House of the People and the Legislatures of States, the qualification of voters at such elections, the preparation of electoral rolls and matters connected therewith.

Mr. Speaker: The question is:

" That leave be granted to introduce a Bill to provide for the allocation of seats in, and the de-elimination of constituencies for the purpose of elections to, the House of the People and the Legislatures of States, the qualification of voters at such elections, the preparation of electoral rolls, and matters connected therewith. "

The motion was adopted.

Dr. Ambedkar: I introduce the Bill.

REPRESENTATION OF THE PEOPLE *BILL--contd.*

The Minister of State for Transport and Railways (Shri Santhanam): I beg to move:

"That the Bill to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of elections to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the

preparation of electoral rolls, and matters connected therewith, be taken into consideration. "

I do not propose to speak at this stage. By the end of the discussion I expect the Minister in charge will be present and he will then reply. If he is not present then I shall reply to the debate.

Mr. Deputy Speaker: Motion moved.

Shri Bharati (Madras) : This is a very important Bill and may I suggest that it would help the discussion to a very great extent if the Hon. Minister in charge of the Bill elucidated certain points which are very necessary, so that we may not traverse unnecessary" ground. The Hon. Minister, Dr. Ambedkar, has just come to the House. It was only because he was not here that Hon. Mr. Santhanam made the formal motion. If Dr. Ambedkar had been here he would certainly have made a very useful speech. I am prepared to speak after the Hon. Dr. Ambedkar has spoken. However, I leave it to the House.

The Minister of Law (Dr. Ambedkar) : Sir, at the outset I must apologise to the House for my delay in reaching the House. I was told that the Insurance Bill would not be finished before 4-30 p.m. and that a message would be sent to me in my room .....

Shri Kamath (Madhya Pradesh): There are always surprises in life.

Dr. Ambedkar: With regard to this Bill it is obvious that the Bill deals with four questions. Firstly, it deals with the allocation of seats for the House of the People among the different States. Secondly, it deals with the fixing of the total seats for the State Legislative Assembly. Thirdly, it deals with the questions relating to the registration of voters for election to Parliament and election to State Assemblies. And fourthly, the Bill proposes to fix the composition of the State Legislative Councils and the registration of voters for the Councils. I propose to take each of these points and explain to the House what exactly the Bill does.

First I propose to explain to the House the question of the allocation of Parliamentary seats among the States. The allocation proposed by the Bill is shown in the First Schedule. The House will recall that the Constitution lays down in article 81 the rules which have to be observed in the matter of distributing seats in Parliament among the different States. The rules to which I made reference are laid down in article 81(l)(b) and 81(l)(c). The first rule which this article lays down is that the constituency shall be so determined that there shall be not less than one member for every 750,000 and not more than one for every 500,000 of the population. The second rule which this article lays down is that whatever standard figure is chosen between these two figures—the maximum and minimum—that standard figure, so far as the States in Parts A and B are concerned, shall be uniform throughout the territory of India. That is the general direction given by the Constitution which this Bill is bound to conform to.

The standard figure adopted in this Bill for the purpose of allocating seats is one Member for every 720,000. It will be seen that this figure is in between 750,000 and 500,000. The seats for the different States are arrived at by dividing the total population of each State by this standard figure of 720,000 and you get the total number of seats for each State set out in the First Schedule to this Bill. The total population is as estimated on the 1st March 1950 according to the order issued by the President under the appropriate article of the Constitution. I believe it is article 347.....

Shri Bharati: Article 387.

Dr. Ambedkar: I believe hon. Members have got the notification issued by the President in which the population of the various States as estimated has been shown .....

Shri Bharati: We have not a copy of it. When was it issued ?

Dr. Ambedkar: It was issued on the 17th April 1950.

Shri Bharati: That was yesterday. We have not been supplied with a copy.

Dr. Ambedkar: I am very sorry. It is in the Gazette. We are in such a great hurry that long intervals are not permissible.

Dr. Deshmukh (Madhya Pradesh): Sir, the figures of population are essential for the Debate.

Dr. Ambedkar: I think they will be circulated. However, I shall read them out.

Part A States

Assam	...	...	8.51 million
Bihar	...	...	39.42 "
Bombay	...	...	32.68 "
Madhya Pradesh	...		20.92 "
Madras	...	...	54.29 "
Orissa	...	...	14.41 "
Punjab	...	...	12.61 "
U.P.	...	...	61.62 "
West Bengal	...		24.32 "

I do not think I need trouble the House with the population figures for States in Part B and Part C.

Shri Raj Bahadur (Rajasthan): We want them.

Dr. Ambedkar: Then I will read them out.

Part B States

Hyderabad	...	...	17.69 million
Jammu and Kashmir	...	...	4.37 "
Madhya Bharat	...	...	7.87 "
Mysore	...	...	8.06 "

Patiala and East Punjab States Union			3.32 "
Rajasthan	...	...	14.69 "
Saurashtra	...	...	3.96 "
Travancore-Cochin		...	8.58

Part C States

Ajmer	...	...	0.73 million
Bhopal	...	...	0.85 "
Bilaspur	...	...	0.13 "
Coorg	...	...	0.17"
Delhi	...	...	1.51 "
Himachal Pradesh			1.08 "
Cutch	...	...	0.55 "
Manipur	...	...	0.54 "
Tripura	...	...	0.58 "
Vindhya Pradesh			3.88 "

That is the population as calculated on the 1st March 1950.

Shri Kamath: What about the Andaman and Nicobar Islands ?

Dr. Ambedkar: I have not got the figures here, and they do not form part of this scheme.

Shri Bharati : Is any Member given to Aandamans in the Schedule ?

Dr. Ambedkar: Yes, but that is a separate thing altogether. I am coming to that.

I have given to the House the total population of the States in Part A, Part B and also in Part C.

Dr. Tek Chand (Punjab) : Are these based on the census of 1941 ?

Dr. Ambedkar: They have been calculated for the purpose of this Schedule by the Census Commissioner who must be taken to be the final authority in this matter; he has advised the Election Commissioner that these should be the standard figures that may be taken as the basis.

Dr. Tek Chand: How have they been calculated ?

Dr. Ambedkar: It is a very difficult thing to say now. They have been calculated in the manner prescribed in the Constitution (Determination of Population) Order, 1950, and the President has accepted them.

As I said, the First Schedule refers to the House of the People. The seats for the States in Part A and Part B have been calculated on the basis of one Member for every 720,000 of the population. With regard to Part C, hon. Members will remember that the determination of the seats for States in Part C is set out in article 82. That article 82 practically leaves it to Parliament to decide it in the best manner it can without being bound by the two rules which have been

laid down in article 81. Consequently, really speaking, this standard figure of 720,000 could not be made the basis for the allocation of seats to States in Part C because on that basis most of those States will not even get a single seat in Parliament. Consequently, what has been done is that they have been just given one seat for the purpose of securing their representation in Parliament without being bound down by any of the rules that have been laid down for States in Part A and Part B.

Shri Syamnandan Sahaya (Bihar) : But in cases where there is more than one seat?

Dr. Ambedkar: I am coming to that. With regard to Delhi an exception has been made, namely, that Delhi has been given three seats.

Shri Raj Bahadur: Why was this exception made ?

Shri Bharati: Because it is the Capital.

Dr. Ambedkar: One of the reasons is that Delhi has quite a big population as compared to the other States listed in Part C. The basis we have taken with regard Delhi is one seat for every 500,000 of the population, and therefore Delhi will have three seats.

Capt. A. P. Singh (Vindhya Pradesh): Why has this standard of 500,000 not been taken as a basis in the case of Vindhya Pradesh ? Vindhya Pradesh has been given only five seats.

Dr. Ambedkar: Vindhya Pradesh has a big population. What I say is this, that we are trying to upgrade where upgradation is necessary ; we are not trying to upgrade where on the population basis a State is getting representation ; and we are upgrading a great deal where a State is not getting any representation at all. It has really got to be done by equitable consideration and not by logic and not necessarily by population.

Then I come to Kashmir. As the House will see, there is a special provision with regard to Kashmir and that provision differs in one important respect and that is that the Kashmir representatives will not be elected by the people. Now, the reason for making an exception in regard to Kashmir is this, namely, that Kashmir is a part of India in a very attenuated manner, so to say. The Article relating to Kashmir says that only Article I applies, that is to say, Kashmir is part of the territories of India. The application of the other provisions of the Constitution, that Article says, will depend upon the President, who may in consultation with the Government of Kashmir apply the rest of the Articles with such modifications and alterations as he may determine. As the honourable House may probably know, there has been already issued an order in regard to Kashmir in which the President has modified the Article providing for the representation of States in Parliament by stating that he shall nominate the representatives of Kashmir in consultation with the Government of Kashmir. I

think it was issued on the 26th January. That being so, there is really no room for this Parliament to make any provision with regard to the representation of Kashmir in Parliament in a manner different from what has been provided in the Bill. I think that nothing more is necessary for the purpose of elucidating how the First Schedule has been brought into being.

I now come to the fixation of the total seats in the State Legislative Assemblies as has been shown in the Second Schedule. With regard to this matter also, we have had to conform to the provisions of Article 170. That Article lays down two rules. One rule is that there should be not more than one seat for every 75,000 of the population. The second rule is that the maximum number of seats of a State Legislative Assembly shall be 500 and the minimum shall be 60. In framing the Second Schedule, the following considerations have been taken into account. The first consideration is that the total number of seats in any Legislative Assembly is not unduly large. The second consideration is that the total number of seats fixed for each State Legislative Assembly is an integral multiple of the State quota in Parliament. The reason for adopting this second rule that the one should form a sort of integral multiple of the other is because by doing so it would be easy to work out the provisions of Article 55. Hon. Members will appreciate that Article 55 provides that notwithstanding the fact that the total membership of the different Legislative Assemblies in the States may be different there shall be equal valuation of the votes cast in the Presidential election. Now, it is quite obvious that this equal valuation would become easier of calculation if we had the total seats in the Legislative Assembly of any State forming an integral multiple of the number of seats for that State in Parliament. That is why the seats have been allotted accordingly. It is, of course, to be remembered that the multiple is not the same in all the cases but the multiple is there. That is how the seats in the Second Schedule have been calculated.

Shri Syamnandan Sahaya: Therefore, the State Assemblies have different numbers in different States. It is unlike the Parliament where you have a fixed number.

Dr. Ambedkar: Yes. The maximum is 500 and the minimum is 60, but different numbers may be fixed for different States. There is no uniformity prescribed in the Constitution. We have a wide limit within which we can fix different totals for different States.

Shri Syamnandan Sahaya: Could we know what is the basis in the different States ? Say 100,000 voters per seat in Assam; 110,000 in Bihar; 120,000 in U.P. and so on?

Dr. Ambedkar: After I finish my speech, if you put that point clearly to me, I shall be able to explain. So much for the fixation of seats in Parliament and in the Legislative Assemblies of the different States.

Now, I come to registration of voters. The principles adopted for registration of voters for Parliamentary constituencies as well as for State Legislative Assembly constituencies are the same. There is no difference. Consequently, I think that it would be enough if I explain the provisions relating to registration of voters for Parliamentary constituencies. The first principle is what is laid down in Clause 15 of the Bill which says that every constituency is to have an electoral roll on the basis of which election will be conducted. The preparation of an electoral roll is therefore an obligatory thing and a condition precedent for election. The second principle is that for being registered on an electoral roll a person should not suffer from the disqualifications mentioned in Clause 16. He should not be a person who is not a citizen of India; or a person who is of unsound mind or a person who is guilty of offences relating to corrupt practices and election offences, then, he becomes eligible for being enrolled or registered in that constituency. The next principle is that a voter can be registered and that, in one and not more than one constituency. Even in one constituency he is to be registered only once. Then we have what are called " conditions of registration ", which are laid down in Clause 19. One is that he must be ordinarily resident for not less than 180 days during what is called a " qualifying period ". Secondly, he must not be less than twenty-one years of age on the qualifying date.

Now, with regard to qualifying date and qualifying period, I think it is necessary that I should make the position a little clearer. On reading the Bill, the House will realise that there are really two different provisions for qualifying period and qualifying date. There is one qualifying period and one qualifying date for the first electoral roll, and there is another provision for qualifying period and qualifying date for subsequent electoral rolls.

Now, for the first electoral roll the qualifying period is from 1st April 1947 to 31st March 1948. The qualifying date for the first electoral roll is the first day of January 1949. Now, these provisions which I have referred to with regard to the qualifying period and the qualifying date for the first electoral roll are really, so to say, beyond our control now, because they were fixed by the Constituent Assembly when it passed a resolution that the election should take place at a certain period in the year 1950 and so on, and that accordingly preparation should be made for the registration of voters and preparation of electoral roll. Now so much work has been done under the authority of the Resolution passed by the Constituent Assembly that it is not possible for us to make any change in the basis which was laid down by the Constituent Assembly. But with regard to the subsequent electoral roll we have said that the qualifying period shall be the calendar year immediately preceding the first of March in each year and the qualifying date shall be 1st March in each year.

Now with regard to the residential qualification, about which I know there has

been a great deal of perturbance in the minds of Members, I should like to draw the attention of the House to clause 20 of the Bill which defines what is called " ordinarily resident ". I would not at this stage enter into any further discussion of the matter, but if a point is raised I shall be glad to give further explanation. In this very clause provision has been made to define or to specify what would be the constituency of any particular person employed in the armed forces.

My attention is drawn to the fact that there is no provision made with regard to persons who have to change their residence by reason of the fact that they are serving in the State and the State either transfers them permanently from one area to another or sends them out of the country. It is perhaps necessary to make a provision to cover cases of this sort and I propose to move an amendment to add a sub-clause to clause 20 to deal with cases of this sort.

Now there is one other provision with regard to the preparation of the electoral roll to which I would like. to draw the attention of hon. Members. The first is this : that the existing roll which will now be prepared will be operative till the 30th of September 1952, that is to say, if any election takes place up to the 30th of September 1952 the electoral roll that would now be prepared will be regarded as operative, although it is probably a stale one — but there is no help to that. Subsequent electoral rolls however would be prepared every year and that will be seen from clauses 23 and 24. This point is important because it is generally agreed that an electoral roll should not be older than, say, for instance, six months, or three months from the date on which election takes place. Under the old English law there was a provision that electoral rolls should be prepared every six months. But they themselves found that this provision was so costly that they have now extended this period to twelve months. It is felt by the Government of India that in a vast electorate which we are likely to have under adult suffrage system, the cost of two revisions in one year would be enormous and consequently we have adopted the modest procedure of having only annual revisions of the electoral rolls. As I stated, these rules which apply to the electoral roll in Parliamentary constituencies are also made applicable to the preparation of electoral rolls to the State Legislative Assemblies and to the State Councils and, therefore, I need not refer to them here at all.

Then I come to the last part of the Bill which deals with the composition of the Upper Chambers in the provinces, hon. Members will remember that there was a considerable division of opinion as to whether there should be second chambers in the provinces or not. The Constituent Assembly left this matter to the choice of the representatives of the various provincial assemblies in the Constituent Assembly to decide for themselves as to whether they should have or should not have second chambers. Some Members decided that there should be upper chambers for their provinces and others decided to the contrary. Consequently,

the Constitution makes provision for the upper chamber for those provinces or those States where their representatives agreed to have such upper chambers. Now the Constitution also lays down how the upper chamber is to be constituted—that will be found in article 171. There again, much of the composition of the upper chambers has really been laid down by the Constitution itself. It says that the maximum of total membership shall not exceed one-fourth of the total of the Lower House and the minimum shall not be less than forty.

That is one priniciple that is laid down in article 171. The other principle that is laid down is that about the distribution of the seats among the various constituent elements from which the Upper House is to be drawn. For instance, one-third are to be elected by municipalities, district boards and such other local bodies in the State as Parliament may by law specify. Further, one-twelfth are to be elected by persons residing in the State who have been at least three years graduates: then one-twelfth to be elected by teachers in educational institutions recognised by the State ; one-third by the Legislative Assembly itself; and the remainder to be nominated by the Governor amongst certain classes of persons who have been specified in clause (5) of article 171. Consequently very little really remains for Parliament to do. As a matter of fact, what remains for Parliament to do is to define what are the other local bodies which are to be selected for the purpose or being constituencies to send Members to this upper chamber. The second thing that is left to be defined is the equivalent of a graduate. When one is graduate of a University no question arises ; but there may be others who have not gone to the Universities and may have equivalent qualifications. What is that equivalent also remains to be determined. Thirdly, we have to define what is an educational institution which would qualify a teacher for being elector and also prescribe the registration of voters.

The local bodies other than municipalities and district boards which are to participate in the elections are set down in the Fourth Schedule which hon. Members will find on page 10. This Schedule has been prepared in consultation with the various State Governments. Hon. Members will see that in all cases municipalties and district boards have been specified. In fact, we cannot go against that provision which is in the Constitution. It is only with regard to other bodies mentioned therein under each State that any question or argument can arise whether that particular body should or should not be included under the head "local authority".

With regard to the question of finding the equivalent of a graduate and defining an educational institution which would qualify a teacher to vote, it is felt that the best thing is that this matter should be left to be determined by the State Government in concurrence with the Election Commission. I do not think it would be possible for us right now or for the Centre to define for each particular State

which person should be treated as a graduate although as a matter of fact in technical terms he is not a graduate.

Shri A. P. Jain (Uttar Pradesh); May I ask a question ? Will you recognise a person as a graduate under this law who is recognised by a State Public Service Commission or the Union Public Service Commission as a graduate ?

Dr. Ambedkar: The point is this that under the Constitution all electoral matters are really the concern of the Election Commission and if the Election Commission seeks the advice of the Public Service Commission or any other body in order that it may come to the right conclusion there will be nothing to prevent it from doing that. But the final authority will be that of the State Government in concurrence with the Election Commission.

I do not think that there is any other point that requires to be elucidated. These are the general provisions of the Bill and I hope that the House will find that they are the most suitable under the circumstances.

Shri R. K. Chaudhuri (Assam) : What about the displaced persons who have come to India now ?

Dr. Ambedkar: If you are raising the point I will explain it now. We have provided, as you will see in clause 20(6), that anybody who has come to India before the 25th July, 1949 will be entitled to be registered as a voter in the constituency in which he resided on that date or in any other constituency which he may specify to be his constituency.

Shri Tyagi (Uttar Pradesh): What about those who are coming now, in 1950 ?

Dr. Ambedkar: That we cannot do, because under our Constitution a voter is required to be a citizen, and our citizenship clause defines citizenship as on the commencement. Unless we have a new citizenship law to regulate the position those who have come after that date I am afraid they will have to go without the franchise. There is no help.

Shri M. A. Ayyangar: ..... .What I suggest, therefore, is that though formally a motion for reference to Select Committee has not been moved, we may sit around a table and consider whatever amendments have been suggested on their merits and incorporate them if necessary. We may adjourn and continue the proceedings tomorrow.

The Minister of Law (Dr. Ambedkar): May I explain a few things, Sir ? May I intervene in the debate to deal with this point about the Select Committee ?

Mr. Speaker: Yes. I am not in touch with what happened during my absence from the Chair, but I have got a sufficiently fair idea of it from what the Hon. Deputy Speaker has said and from the reception of what he said just now.

So, one could appreciate the demand for a Select Committee which means only an earnest and a pressing request for a quiet consideration of all the various

provisions. That is what it really comes to.

Dr. Ambedkar: There is no motion for a Select Committee.

Shri Santhanam: The Select Committee may consist of a fairly large number thirty or forty, of those people who are very keenly interested and who want to press certain amendments. Tomorrow we can discuss the Select Committee proposals.

Mr. Speaker: Whether it is a formal, technical, Select Committee or an informal meeting of thirty, forty or fifty Members who want to have their full say in the matter, all that I am keen about is that, everybody should as far as possible be given an opportunity to express his own views and the difficulties he might be feeling. If that is done I think our object will be served. I think we may adjourn just now and meet tomorrow at about 2-30.

Dr. Ambedkar: Sir, I think it is desirable that I should state to the House exactly what a Select Committee will be able to do and what it will not be able to do. I think it will be wrong on my part to agree to any such motion leaving the House in darkness as to what is possible to be done by a Select Committee and what is not possible. I think my remarks might also enable the House to decide whether in view of the points that may remain open for discussion it is desirable to have a Select Committee.

The first thing I am quite certain about is that the Select Committee will not be able to alter the provisions regarding qualifying period and qualifying date. I am quite certain in my mind that however desirable it may be, it would not be possible to do so, for the simple reason that we had taken a decision in the Constituent Assembly, as every Member of this House will remember, that the elections will take place at a certain time, and under that Resolution directions were issued to various States to prepare their electoral rolls. Most Members of the House must have noticed a statement which was recently published in the *Statesman* or the *Hindustan Times* stating the progress which the various States have made in the matter of the preparation of the electoral rolls. Now, those electoral rolls prepared by the various States were made on the basis of the qualifying period and the qualifying date.

Obviously, unless the House comes to the conclusion that the labours which have been devoted by the various States to the preparation of the electoral roll ought to be thrown overboard *(Shri Sondhi:* Who says that ?) and that we should in this Bill fix a qualifying date and a qualifying period which would be much nearer the preparation of the electoral roll than the existing ones have been, it seems to me absolutely clear that it would not be possible for the Select Committee or for me to accept a new qualifying date and a new qualifying period.

Shri Sondhi: Can we not have supplementary lists ?

Dr. Ambedkar: This question was put to me in the morning. I was asked as to what would happen to those who come of age, that is to say, who become twenty one, after the present qualifying date.

Shri Sondhi : What about those who have been left out ?

Dr. Ambedkar: I am conscious of all that I have been saying. Please let me go on.

I had the matter examined by the Election Commissioner and my Ministry. The question is as to how much labour would be involved in the preparation of the supplementary electoral roll which would contain the names of persons who have come of age after the qualifying date that we have fixed. I am told that the number would be quite enormous. It would involve new work. We would have to have new machinery in addition to the one that would be necessary to revise the rolls that have already been prepared. This additional burden would certainly have the effect of postponing the target dates for certain stages that we have fixed. Therefore, unless this House is prepared to accept the proposition that there need be no cancellation on the date mentioned by the Prime Minister, it would not be possible to undertake this piece of work. I want to make that point quite clear. Unless the Select Committee is prepared to take the responsibility of recommending to Government that the work that has already been done be thrown overboard and be deemed to be of no value and that additional work be taken up notwithstanding the cost and the impossibility of providing additional material, my submission to the House is that the Select Committee cannot alter these provisions.

What are the other provisions in this Bill ? The other provisions are only two. They are urgent matters and I have not seen any hon. Member making any kind of reference to them. One clause which is important and about which I myself feel that the Bill might do something more is with regard to delimitation of constituencies. Except one hon. Member, nobody had realised.....

Some Hon. Members: We have not spoken as yet.

Dr. Ambedkar: Notwithstanding the fact that so much heat and so much vehemence have been introduced in this debate.....

Shri Sondhi: You will have more of it.

Shri Kamath: You are adding to it.

Mr. Speaker: Order, order. Let him go on.

Dr. Ambedkar: In the Constitution, there is a provision that delimitation shall be undertaken by Parliament. That is there. In this Bill, what we have proposed is that this power which belongs to Parliament may be delegated to the President, and the President may, by order, prescribe what the constituencies are. It may be contended—and very rightly too—that this matter ought not to be left to the

President but that this Parliament should engage itself in looking into every constituency that may be framed for the purpose of both the elections to the Parliament and to the State Legislatures. I do not deny the right, but the question is whether Parliament can and will be able to find the enormous time that will be necessary for scrutinising every constituency both for the Parliament and for the State Legislatures.

Dr. Deshmukh: That is not the only course.

Dr. Ambedkar: Please let me go on.

Therefore, in this particular clause 13, the provision is made that although the President may, by order, prescribe and delimit constituencies he shall be bound to place the order of delimitation before the House. I may frankly state that even I am not satisfied with this provision, because I want Parliament to have a look into it. But nobody has suggested this. *(Interruption*). This is one point which the Select Committee may look into, I agree. But why go to the Select Committee for this kind of thing ? I have a solution. I have two alternatives. One is that clause 12 may be so amended that we can add that the order of delimitation made by the President should be placed before Parliament and if Parliament does not make any alteration in it, then within a prescribed period it should become final. That is one alternative. The other alternative which I am prepared to propose is that when delimitation is undertaken, whoever delimits, there shall be associated with him a Committee composed of Members of this House or of the local State Legislature who are concerned with that particular constituency, so that they may be in a position to give their advice and their judgement to the officer who is engaged in delimitation. *(Shri Tyagi :* That is a good idea.) If the House is agreeable to that, there is no need to refer this Bill to a Select Committee at all.

Then, Sir, the other point that remains in the Bill is this. I do not think that I am accusing anybody in saying what I do, namely, that a large part of the heat and vehemence and the general plausible argument that have been engendered have been intended merely to cover a very small point, namely, that most hon. Members are interested in having the number of seats in the State Legislatures increased, but they have not had the courage to say so, except one or two. If hon. Members are only interested in this little point that the number for the U.P. should be increased by 15 or that the one for Mysore should be increased by I or that the one for Delhi should be increased by 2, I want to ask whether it is not a matter which we can deal with in this House ? Why bother with a Select Committee ?

Shri Bhatt: You cannot deal with all the details.

Dr. Ambedkar: There are no details. I am myself moving certain amendment changing the figures in the total representation of the various States. If my hon. friends think that I am very miser and meagre and that I am not meeting their

demands, well, they can move their amendments right here and the House may decide whether the figure that I suggest is the right figure or whether the figure that they suggest is the right figure. Why send it to the Select Committee ? Where is any other thing in this Bill, I want to know, which the Select Committee can deal with? This is a routine Bill.

My hon. Friend Mr. Hossain Imam said that there were certain matters which were not included in this Bill. I think that he forgot what I had stated when I made my observation on the introduction of this Bill. I had stated then that this Bill deals with only one aspect of the election. The conduct of election as such is quite a different matter and will be dealt with by another Bill. Consequently, all those matters which appear to be absent here are not going to remain absent, because the elections cannot be completed and carried on unless the complementary part of the legislation is also put through. Therefore, my submission is that although there is no motion—and you said that a motion can very well be manufactured if one is wanted ;—quite true that it can be— but is there any necessity ? That is the point which I want the House to consider. These are the three points and I have the amendments ready with me.

Mr. Speaker: The House was proceeding yesterday with the consideration of the following motion:

"That the Bill to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of elections to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, and matters connected therewith, be taken into consideration. "

Shri Syamnandan Sahaya: .....Now that the Law Minister is here I hope he will place before you the facts as transpired this morning and then we may proceed to consider the Bill clause by clause.

The Minister of Law (Dr. Ambedkar) : I am sorry, Sir, that I was late. At your suggestion there was a meeting held this morning under the chairmanship of the Deputy Speaker of such Members of the House as were interested in this Bill and I am glad to say that we have unanimously accepted certain amendments to this Bill which I propose to move with your permission. I hope that there will be no further controversy or debate on the subject.

Shri Tyagi (Uttar Pradesh): I have not been accommodated. I agree with the amendments, but my points have not been accommodated and my amendment has not been accepted. Therefore, it was not ' unanimous '.

Mr. Speaker: Whatever the reasons, the conclusion seems to be unanimous. I shall put the consideration motion to the House and then we can take the Bill clause by clause. I must congratulate the Members on the very happy end that has been brought about. The question is:

"That the Bill to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of elections to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, and matters connected therewith, be taken into consideration. "

The motion was adopted.

Mr. Speaker: We may now proceed with the Bill clause by clause.

Dr. Ambedkar: There is an amendment to clause 13 and I would therefore like that clause to be held over because the amendment is being typed.

Mr. Speaker: All right, I take it generally that the previous amendments tabled by hon. Members are all scrapped.

Dr. Tek Chand (Punjab): Unfortunately we have not seen the wording of the amendments in respect of what we decided in the morning. There was only a general talk. And with regard to some of the clauses, for instance with regard to clause 6, there is still a great deal of controversy and there is no unanimity.

Dr. Ambedkar: There is no controversy.

Mr. Speaker: I do not at all want to exclude any amendment tabled. I was trying to clarify the position so that if there are no amendments I shall take those clauses together.

Dr. Tek Chand : What are the new amendments ? Let us see them. Nobody has seen them. Without seeing them how can we pass them ?

Dr. Ambedkar: I will read them.

Mr. Speaker: Has the hon. Member, Dr. Tek Chand, any amendments to move?

Dr. Tek Chand : We have sent an amendment to clause 6.

Clauses 2 to 5

Mr. Speaker: Is any hon. Member desirous of moving any amendment to any of the clauses 2 to 5 ?

Some hon. Members: None. *Clauses 2 to 5 were added to the Bill.******

Shri Buragohain (Assam): May I submit before the Hon. Minister replies.....

Dr. Ambedkar: I do not want any suggestions.

Mr. Speaker: The better course will be to know the reactions of the Law Minister.

Shri Buragohain : Sir, the case of the Tribals of Assam stands on a different footing. I have to.....

Mr. Speaker: The better course will be to hear the Hon. Minister first. Do the hon. Members want me to place this amendment at this stage, or shall I place it later? All right, I shall place it later.

Dr. Ambedkar: I regret very much that I cannot accept either of the amendments moved by Mr. Jain or by Mr. J. R. Kapoor. But, I do want to remove any kind of suspicion that there might be in the mind of Mr. Jain or Mr. Kapoor or of any other Member of Parliament. It seems to me that they are under a misapprehension that by clause 6 Parliament is going to be completely deprived of the right to determine what should be the nature of the constituency: whether it should be single-member constituency or plural member constituency; what should be the method of voting, whether it should be distributive voting or one man one vote or cumulative voting or any other system. I have not the slightest intention to deprive Parliament of its right to have its determination upon that subject. In fact, as I said in my opening speech yesterday and according to the statement made yesterday by the Prime Minister, this Bill is not a complete Bill itself. This Bill is to be followed by another Bill which may be either called Conduct of Elections Bill or the Electoral Bill. In that Bill, matters relating to the constituencies, qualifications and disqualifications of candidates and matters relating to the voting system will be dealt with and it will be undoubtedly within the competence of Parliament to come to a decision when that Bill is placed before the House, as to what sort of system of constituency and voting they approve of. Therefore, there is no desire at all to oust the jurisdiction of Parliament at all. On the other hand, as my hon. friends will remember, I myself am anxious that at every stage in the delimitation of constituencies, Parliament should be associated. As they know, I am making a provision in clause 13 that not only will the order of delimitation be placed before Parliament as an information, but also I am going to move an amendment that Parliament should have the right to make suggestions and modifications as it likes provided it wishes to do so within a stated priod of ten days or so. In addition to that, there is also going to be an amendment empowering the Speaker to appoint Committees of this House to be associated with the work of delimiting constituencies, the members to be drawn from that particular area. Having regard to the statement which I have made, I think it is clear that I have not the slightest desire to oust the jurisdiction of Parliament. I am providing for placing the Order of delimitation on the Table of the House with the right of the House to make any changes they may like and in addition there is a further provision that the Speaker will have the right to appoint Committees to be associated with the work of delimitation. I do not think that any Member have any doubt that we have the fullest desire to have Parliament's decision on this matter. The only thing is that this Bill happens to come first when, as a matter of fact, that Bill might have come first. The point is that clause 6 of this Bill which provides for delimitation will certainly not come into operation until that other Bill has been passed. It is obviously so, because, we are now, as you know, amending section 21 providing for a supplementary

electoral roll which itself will take a pretty long time and give us sufficient opportunity to place that Bill before Parliament.

Shri Sondhi: Why not delete the clause when it is not to come into operation.

Dr. Ambedkar: It should not be deleted.

Shri Kesava Rao (Madras): I have a little doubt regarding sub-clause (b) of clause 6. I am afraid the seats reserved for scheduled castes and scheduled tribes will be determined by the President after consultation with the Election Commission. I am doubtful that the total number reserved is not stated anywhere. Even in the Parliament and in the Constituent Assembly it was many times stated that the number should be fixed.

Dr. Ambedkar: It is there in the Constitution according to the population. All that is necessary is to know the population. As regards delimitation I have my own doubts.....

Mr. Speaker: Let not the hon. Member go into administrative details. All that the House can do is to decide the principles, leaving it to the authorities concerned to work them out in practice. But, I myself was feeling one doubt about Mr. A. P. Jain's amendment and what was said by Pandit Thakur Das Bhargava. I am not conversant with the discussions in the Constituent Assembly nor with the discussions at the informal meeting this morning. As I understand it, all that the Members are anxious about is that, before any constituencies are fixed or delimitation is effected, this House must have an opportunity of examining it and expressing its views on that; because, it is not possible to have all these constituencies mentioned as an appendix or a schedule to an Act that the House might pass. As has been rightly pointed by Mr. Krishnamachari, all that the law is expected to do is to make a " provision " for such and such a thing. That does not necessarily mean that all the details must be settled here, in the House. The House may prescribe the legal machinery by which a certain thing can be done. My difficulty is that, I am not able fully to understand the point of view of those who object. The object of the House seems to be to have an opportunity to express its views. After all, any Bill that comes before the House even in the manner in which the hon. Member has suggested would be prepared by the executive and will come in a ready and cut and dried form. I see that Dr. Ambedkar proposes to move an amendment to clause 13, and hon. Members will note that according to that amendment, whatever is done by the President is subject to such modifications as the Parliament may make. It is, therefore, clear that whatever orders are passed are coming again before the House for its scrutiny and the Parliament will have a statutory right of suggesting modifications. It will not be a matter for which Government may or may not find time, according to their sweet will. If any modification is suggested by any Member, that modification must come before the House and Government must

find time for it.

Dr. Ambedkar: If you will permit me, Sir, I am going a step further. The Parliament cannot merely do this post-mortem, so to say, at the fag end but what I am saying is that I shall bring in a Bill in which all these matters will be dealt with by law and Parliament will have an opportunity to express its opinion upon it. It is a much greater opportunity that I am proposing. Not having considered this matter properly and thoroughly I am not in a position to commit myself one way or the other. But whatever the system of the electorate, whatever the basis of voting, whatever the qualifications or disqualifications of the candidates, all those matters will be dealt with by a Bill which Government will bring forward here long before the operation of clauses 5 and 6 will come about.....

Mr. Speaker: Apart from that I was also pointing out that the House having got the right.....

Dr. Ambedkar: That is in addition to what the House will do. I am doing something further than that. I am now introducing an amendment to clause 13 to enable you to appoint committees to work with the Election Commissioner in the matter of the determination of the constituencies. The further provision that I am making is this: that the constituencies as will be set out in the order will be as recommended by that Committee and not by the Election Commission. I am cutting out by an amendment the Election Commission. I am giving the Committee the direct authority to do it.

Shri Kamath (Madhya Pradesh) : Will the Committee be appointed or elected ?

Dr. Ambedkar: In such manner as the Speaker may determine.

Pandit Thakur Das Bhargava: It may be that the Committee and the Election Commission may decide in regard to each State differently and may not arrive at a common basis.

Dr. Ambedkar : As I said just now, I will bring in a Bill to determine these matters and when the Bill is passed, whatever law or whatever provision is made will be applied uniformly throughout India or differently in different States as Parliament chooses.

Dr. Ambedkar: I stand by the assurance that I have given that there will be a Bill. It will deal with both the aspects : (1) the nature of the constituencies—whether they are to be single-member or plural-member; and (2) what should be the system of voting. As I said, we shall also deal with the candidate, his qualifications and disqualifications. I have no desire in any way to take away the power of Parliament and if I may say so with all respect, I disagree with my hon. friend Mr. Santhanam who said that this was a matter entirely to be relegated to the Election Commission. The Election Commission is there merely to control and supervise the elections, but the delimitation of constituencies is a matter for

Parliament.

Mr. Speaker: Does Mr. Jain want me to put his amendment to the House ?

Shri A. **P. Jain:** I just want of say a few words.

Mr. Speaker: I think we have had enough discussion. It will be a wrong procedure if I allow a person to speak over and over again on the same amendment. If he wishes me to put his amendment before the House, I shall do so.

Shri A. P. Jain: No, Sir, I do not want it to be put to the vote of the House.

Shri J. R. Kapoor ; In view of the assurance given by the Law Minister, I do not wish mine also to be placed before the House.

Dr. Ambedkar: Sir, I have an amendment to clause 6. I beg to move: " In sub-clasue (2), omit ' after consulting the Election Commission '."

So that the House will understand its significance, I shall read Clause 13. I have proposed an amendment to clause 13, which reads thus: For existing clause, substitute:

" 13, *Procedure for making orders under sections 6, 9 and II.*— (1) As soon as may be after the commencement of this Act, there shall be set up by the Speaker—

(a) in respect of each Part A State and Part B State other than Jammu and Kashmir an Advisory Committee consisting of not less than three, and not more than seven Members of Parliament representing that State; and

(b) in respect of each Part C State other than Bilaspur, Coorg and the Andaman and Nicobar Islands, an Advisory Committee consisting of the Member or Members of Parliament representing that State.

(2) The Election Commissions shall, in consultation with the Advisory Committee so set up in respect of each State, formulate proposals as to the delimitation of constituencies in that State under sections 6, 9 and II or such of these sections as may be applicable and submit proposals to the President for making the orders under the said sections.

(3) Every order made under section 6, section 9, section II or section 12 shall be laid before Parliament as soon as may be after it is made, and shall be subject to such modifications as Parliament may make within twenty days from the date on which the order is so laid. "

Now, the responsibility of finally determining the constituencies is cast upon these Committees and consequently it is the recommendation of the Committees that will become operative. That being so, the old provision which required consultation with the Election Commission is unnecessary. That is why I am omitting those clauses.

Mr. Speaker : Amendment moved : " In sub-clause (2), omit ' after consulting the Election Commission ', "

Pandit Balkrishna Sharma (Uttar Pradesh) : On a point of clarification, Sir, the doubts raised by my hon. friend Pandit Thakur Das Bhargava that different Committees which the Hon. the Speaker may appoint consisting of three to seven Members may make different recommendations in regard to different States and therefore there may not be uniformity have not been answered. How is that contingency provided for?

Dr. Ambedkar: The reply is very simple. The work of the Committees both in respect of Parliamentary constituencies and State Legislature constituencies will be governed by the law which, as I said, Parliament would be making hereafter. So, they would not be acting independently.

Dr. Deshmukh (Madhya Pradesh): Sir, when the Hon. the Law Minister moved to delete the words " Election Commission ", I felt very happy. But unfortunately they are coming in again byway of amendment to clause 13. I am in a very co-operative mood today and am prepared to take the most sympathetic view of the whole situation, but I would urge that the Election Commission should be absolutely kept apart from the work of the delimitation of constituencies. This is a body which has come into existence as a result of the Constitution and its functions have been determined by article 324 of the Constitution. So, there should be some amendment to say that the President shall bring into being such bodies as may be necessary for the delimitation of constituencies. The main idea is that the Election Commission should be the last body which should have anything directly to do with the delimitation of constituencies.

Shri Kamath.: In view of the fact that the work envisaged in this Bill has to be undertaken almost immediately, am I to understand that the purport of this amendment is to see that these Committees—Advisory or otherwise—will be constituted immediately ?

Dr. Ambedkar: No. As soon as the other work is ready, they will be constituted.

Mr. Speaker: Hon. Members will see that there must be set up some administrative machinery for making proposals, and that administrative machinery, so far as I see, is the Election Commission.

Dr. Ambedkar; Otherwise, how can Members of the House delimit a constituency ?

Mr. Speaker: I will invite the attention of the House to one thing more and that is this—that though the committees are advisory the amendment says "the Election Commission shall, in consultation with the advisory committees ", not after consultation. That is a big change. But whatever that may be, I put the amendment to the House. It has been sufficiently discussed.

Shri Syamnandan Sahaya : Sir, I just want to bring to your notice that after the President has determined the Parliament is supposed to alter it.

Dr. Ambedkar: I have said so many times that the President will not do

anything except in accordance with the law which will be made. How many times am I to repeat it ?

Mr. Speaker: The question is : " In sub-clause (2) omit ' after consulting the Election Commission '. "

The motion was adopted. (Clause 6, as amended, was added to the Bill.—*Ed.).*

Clauses 7 and 8 *Clauses 7 and 8 were added to the Bill.*

Clause 9 *(Delimitation of Assembly Constituencies.)*

Amendment made: " Omit ' after consulting the Election Commission '. "

—[*Dr. Ambedkar]*

Shri Tyagi: I beg to move: Add the proviso:

" Provided that areas comprising a municipal board or a municipal corporation shall not be included in a constituency which comprises of rural areas.

Sir, since the time this Bill has come before this House I have been striving my best to see that the rights and privileges which have so far been enjoyed by the rural areas may not be taken away from them. For the last thirty years and more rural areas have been having their separate constituencies in the Legislative Assemblies of the various States.

Dr. Ambedkar: Sir, may I point out, in order to curtail discussion, that this is a matter which could more appropriately be dealt with in the Bill which will be coming up before the House. I do not think that this is a matter which is germane to this particular Bill.

Shri Tyagi: But then there would be no point in my bringing it up after the electoral rolls are prepared where rural areas are mixed up with urban areas.

In the case of other hon. Members' amendments the Hon. Dr. Ambedkar has given some assurance that they will be considered—but mine he has been opposing all along. For the last two days I have been trying my best to convince him of my view-point ; but he has not given me a sympathetic hearing.

Mr. Speaker: But this time he has shown sufficient sympathy by saying that the matter may be brought up at the time when the next Bill is taken up.

Clause 10

Clause 10 was added to the Bill

Clause II

(Delimitation of Council Constituencies) Amendment made: " Omit ' after consulting the Election Commission '. "

—[*Dr. Ambedkar] Clause, as amended, was added to the Bill.*

Clause 12 *(Power to alter or amend orders)*

Shri Syamnandan Sahaya: I cannot understand what is the necessity for this clause, because over and above all these Advisory Committees this gives the President power to alter the whole thing after consulting the Election

Commission. I want to understand the position. It runs counter to what we agreed to.

Mr. Speaker; Perhaps, the idea is to vest the President with power to revise his own orders from time to time.

Dr. Ambedkar: Once the orders have been finalised by Parliament there will be no power to amend them.

Mr. Speaker: But are the words " after consulting the Election Commission " necessary ?

Dr. Ambedkar: That is before they have been finalised by Parliament.

Shri Syamnandan Sahaya: There will be this Advisory Committee. The Advisory Committee and the Election Commission will jointly send a particular proposal to the President. The President accepts it and passes orders under clauses 6, 9 or II. After that the election goes on.

Dr. Ambedkar: After that the order is placed before Parliament. The recommendation is made by the Advisory Committee to the President. The President may make an order. After that the order is placed before Parliament. There is an interregnum. During the period if the President thinks that probably he has made an error he should have the power to alter or amend the order.

Mr. Speaker: So, this power will not extend to alteration after the House approves. Then it is final.

Clause was added to the Bill.

Clause 13 *(Orders to be laid before Parliament)*

Dr. Ambedkar: I beg to move: For existing clause, substitute:

" 13. *Procedure for making orders under sections 6, 9 and II.*— (1) As soon as may be after the commencement of this Act, there shall be set up by the Speaker—

(a) in respect of each Part A State and Part B State other than Jammu and Kashmir, an Advisory Committee consisting of not less than three, and not more than seven, Members of Parliament representing that State; and

(b) in respect of each Part C State other than Bilaspur, Coorg and the Andaman and Nicobar Islands, an Advisory Committee consisting of the Member or Members of Parliament representing that State.

(2) The Election Commission shall, in consultation with the Advisory Committee so set up in respect of each State, formulate proposals as to the delimitation of constituencies in that State under sections 6, 9 and II or such of these sections as may be applicable and submit proposals to the President for making the Orders under the said sections.

(3) Every Order made under section 6, section 9, section II or section 12 shall be laid before Parliament as soon as may be after it is made, and shall be subject to such modifications as Parliament may make within twenty days from

the date on which the Order is so laid. "

Mr. Speaker: I have just one doubt in sub-clause (3). The wording is "and shall be subject to such modifications as Parliament may make within twenty days from the date on which the Order is so laid. " What is really intended, I think is that the motion for making amendments may be initiated within twenty days.

Dr. Ambedkar: It will be initiated long before so that the final order of Parliament shall be passed not after twenty days ; twenty days is the period that has been given. Government will no doubt initiate whatever changes are necessary.

Mr. Speaker: I do not know. I thought that it would be a rather difficult matter. It is just possible that the House may be engaged with important business and it may not pass the necessary order before twenty days.

Dr. Ambedkar: The House will then have to give precedence to this.

Mr. Speaker: What I was considering about this was that we might say " and shall be subject to such modifications as Parliament may make on a motion made within twenty days from the date on which the Order is so laid. "

Dr. Ambedkar: I am prepared to accept it.

An. hon. Member: Parliament may not be in session.

Mr. Speaker: Therefore, what I was suggesting to the Law Minister was that twenty days will be counted from the time of laying it when the House is in session and the only condition should be that a motion is made within twenty days.

Shri Ramalingam Chettiar (Madras): I have a little doubt as between clauses 12 and 13. Clause 12 says that the President may alter the order he has passed already. Clause 13 says that it may be modified by the Parliament. In the interval what is going to happen ? Is the order passed by the President to be effective or is it to be only provisional.

Dr. Ambedkar: It is provisional because the final authority is with Parliament.

Shri Ramalingam Chettiar: You do not say so. The section as it stands says that it is a final order subject to modification and not that it is a provisional order. The order becomes effective immediately it is passed. It may be modified by the Parliament afterwards.

Dr. Ambedkar: It is a provisional order in the sense that if Parliament does not afterwards modify, it takes effect. But the ultimate power of enactment so to say is left to Parliament.

Pandit Thakur Das Bhargava: The point raised by my hon. friend Mr. Kamath was that as a matter of fact according to the Constitution the Election Commissioner is invested with certain powers and these powers do not deal with the delimiting of constituencies. It is the privilege of the Parliament alone to

delimit constituencies. Now the Election Commissioner is put in a much better situation than even the Committee. He will only consult it and he has the right to formulate the proposals.

Mr. Speaker: This is the same thing which was raised previously. When we discussed clause 6 the same point was raised and the position has been clarified already by the Hon. the Law Minister. Ultimately it is Parliament which is going to exercise this power.

Dr. Ambedkar: All these are preliminary stages. Even the President's order is a preliminary stage.

Mr. Speaker: The hon. Member will see in the amendment the words " formulate proposals as to the delimitation of constituencies ". He is not given the power of determining. Another thing to remember is that, it is this Parliament that will deliberate and examine the proposals in respect of the delimitation.

Dr. Deshmukh: ..... .You might lay down any procedure by which the committees will be elected. But there should be some element of election in so far as these persons are concerned. The Chair should not be saddled with the responsibility of creating a body which is going to determine the constituencies.

Mr. Speaker: May I know the reactions of the Hon. the Law Minister?

Dr. Ambedkar: I cannot accept any of these amendments.

Sardar B. S. Mann: What about my amendment Sir ? What is the Hon'ble Minister's reaction ?

Dr. Ambedkar: I cannot accept it.

Sardar B. S. **Mann:** Then I do not move it.

Clause 20 *(Meaning of ' Ordinary resident ')*

Dr. Ambedkar: I beg to move : After sub-clause (3), insert:

" (4) Any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which the provisions of this sub-section apply, or any person who is employed under the Government of India in a post outside India, shall be deemed to be ordinarily resident during any period or on any date in the constituency in which, but for the holding of any such office or employment, he would have been ordinarily resident during that period or on that date. " and renumber the subsequent sub-clauses. In sub-clause (4), renumbered as sub-clause (5),— (i) after " sub-section (3) ", insert " or sub-section (4) "; and (ii) after " Armed Forces " insert " or but for his holding any such office or being employed in any such post as is referred to in subsection (4)."

In sub-clause (5), renumbered as sub-clause (6),— (i) after " sub-section (3) ", insert " or sub-section (4) " ; and (ii) for " sub-section (4) ", substitute " sub-section (5) ";

This amendment is made for the purpose of removing some doubts that were expressed with regard to the application of the term " ordinarily resident " which occurs in clause 20, in its application to certain persons who may have temporarily left their places of ordinary residence and gone to stay somewhere else. It is felt necessary that such a provision ought to be inserted in this clause. This refers to persons who are sent outside India temporarily on official duty and in whose case it may be presumed that they have ceased to reside in the place of their ordinary residence. It is to prevent that kind of presumption being drawn in their case and to retain their right to be registered in the constituency in which they have been ordinarily residing that this provision is made.

Similarly, this provision is also intended to apply to the case of Ministers, for instance, at the Centre who, having regard to the fact that they have accepted certain offices under the State, presumably intend to stay here during the term of their office which might be co-terminus with the term of Parliament itself, namely five years. There again, it might be presumed that they have ceased to reside in the place where they have been ordinarily residing. It is to cover that case also that it is felt that some such provision is necessary.

It was also suggested to me that Members of Parliament as distinguished from office-holders, such as Ministers and so on, may be affected by the other presumption, namely that as they come here often they may also be deemed not to reside in the place where they are ordinarily resident. But on advice I feel that that presumption cannot be applied to them, for the reason that when a man temporarily for some specific reason leaves his ordinary place of residence and goes somewhere else, it cannot be presumed in law that he has abandoned his intention to revert to his original place of residence. Consequently, I don't think that that provision is necessary in the case of Members of Parliament. In the other two cases it seems that it may be necessary and as a measure of precaution I propose to introduce this amendment.

The motion was adopted: Clause, as amended, was added to the Bill.

Clause 21 *(Meaning of ' qualifying date ' and ' qualifying period ')*

Dr. Ambedkar: I beg to move: For sub-clause (a), substitute:

" *(a)* in the case of electoral rolls first prepared under this Act, shall be the first day of March 1950, and the period beginning on the first day of April 1947 and ending on the thirty-first day of December 1949, respectively; and "

This is the result of the agreement that was reached this morning as regards the preparation of the electoral rolls and the qualifying period.

Clause 27

Dr. Ambedkar : Sir, I thought that I had this morning explained to the hon. Member who initiated this debate why clause 17 was not applied, but evidently he was very keen that his objections should be heard by the whole House. I do not deny him that privilege.

Shri Ethirajulu Naidu: On a point of order, Sir, is it in order to refer to what transpired at the meeting in the morning ?

Dr. Ambedkar : Certainly ; there is nothing secret about it. The committee was constituted by the Speaker himself.

Mr. Deputy Speaker : There is nothing secret about it. It is in order.

Dr. Ambedkar: Now, Sir, the point is this. No doubt we have initiated in clause 17 of the Bill a very important principle, namely, that one man shall be registered in one constituency and that he shall have one vote, but it must always be understood that the principle can be made applicable only in the case of constituencies of the same class, that *is* to say, territorial constituencies. Now, the constituencies which we propose to form under clause 27 of this Bill are different classes of constituencies. They are not constituencies of the same class. A graduate constituency is a constituency of a different class. A teachers' constituency is a constituency of a different class. Similarly, the local authorities' constituency is a different class of constituency. Consequently, there does not seem to be any very great anomaly if the name of a person is included in the electoral rolls of different classes of constituencies. Besides, I am really bound to say this : I cannot understand why Members of Parliament are so much exercised over the constitution of the Upper Chamber.

It is an utterly effected body—not even an ornamental one. It has no power—not even power of revision. It is not a body 5-00 p.m. with co-equal authority with the Lower Chamber.

Some provinces desired that they should have them. They were probably under the impression that their Second Chamber would be a Second Chamber more or less on the same pattern of the Chamber here, which would have the authority to hold up, if not financial legislation, at least ordinary legislation. But even that power is not there and I do not understand why Members of Parliament, even for the sake of merely maintaining some theoretical principle bother their head about a constitutional body which I say is of no value and no consequence.

Clause 27 was added to the Bill.

Clauses 28 and 29

Dr. Ambedkar: I had assured my friend Pandit Thakur Das Bhargava that I would make a statement on the point in which he is interested and I do now say that we shall take every care to see that the existing electoral rolls are revised and any omissions or additions that are necessary will be made.

Clauses 28 and 29 were added to the Bill.

New Clause 30

Dr. Ambedkar: I beg to move : After clause 29, add:

" 30. *Jurisdiction of civil courts barred.*—No civil court shall have jurisdiction—

(a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in a electoral roll for a constituency; or

(b) to question the legality of any action taken by or under the authority of an Electoral Registration Officer, or of any decision given by any authority appointed under the Act for the revision of any such roll. "

This is a usual clause and was omitted inadvertently. The motion was adopted.

New clause 30 was added to the Bill.

Schedules

Dr. Ambedkar: I beg to move:

(i) In the First schedule,—

(a) for the entries under the heading " Part C States " substitute :

"1. Ajmer ... 2
2. Bhopal ... 2
3. Bilaspur ... 1
4. Coorg ... 1
5. Delhi ... 4
6. Himachal Pradesh ... 3
7. Kutch ... 2
8. Manipur ... 2
9. Tripura ... 2
10. Vindhya Pradesh ... 6
11.Andaman and Nicobar Islands ... 1"

(b) against " Total ", for " 488 " substitute " 496 ".

(ii) In the Second Schedule, in column 2, for existing entries, substitute:

"108
339
315
232
375
140
126
430

238
175
99
99
60
160
60
108 "

(iii) In the Third Schedule, in column 2: to 7, against "Bihar", "Bombay", " Madras" and "Uttar Pradesh", for existing entries, substitute:

"72
24
6
6
24
12"

(iv) For the Fourth Schedule, substitue:

" THE FOURTH SCHEDULE

[See section 27(2)]

Local Authorities for purposes of elections to Legislative Councils

BIHAR

1. Municipalities.
2. District Boards.
3. Cantonment Boards.
4. Notified Area Committees.
5. The Patna Administration Committee.

BOMBAY

1. Municipalities.
2. District Local Boards.
3. Cantonment Boards.

MADRAS

1. Municipalities.
2. District Boards.
3. Cantonment Boards.

4. Major Panchayats, that is to say, Panchayats notified by the State Government in the *Official Gazette* Panchayata which exercise jurisdiction over an area containing a population of not less than five thousand and whose income

for the financial year immediately preceding the date of the notification was not less than ten thousand rupees.

PUNJAB

1. Municipalities.
2. District Boards.
3. Cantonment Boards.
4. Small Town Committees.
5. Notified Area Committees.

UTTAR PRADESH

1. Municipalities.
2. District Boards.
3. Cantonment Boards.
4. Town Area Committees.
5. Notified Area Committees.

WEST BENGAL

1. Municipalities.
2. District Boards.
3. Cantonment Boards.
4. Local Boards.

MYSORE

1. Municipalities.
2. District Boards. "

Mr. Deputy Speaker: Amendments moved.

Mr. Deputy Speaker: May I suggest one course ? Those who are satisfied with the number of seats allotted need not speak. We have got another Bill. Other hon. Members who have got any representation to make may make their points.

Shri Deshbandhu Gupta: I want to say a few words.

Dr. Ambedkar: You have got four seats all right.

Shri Gautam (Uttar Pradesh) : I do not want to take much time of the House. I rise to oppose the amendment moved by Shri Jaspat Roy Kapoor. I want to say that we the people of U.P. and the Government of U.P. are satisfied with the number 72 so far as the Upper House is concerned. We do not want any more and—

Shri J. R. Kapoor: Does the hon. Member claim to be the sole representative of the U.P. both of Government and the people ?

Shri Gautam: I know the mind of the Government and I am in a position to say that I know the mind of the people. I can claim that I represent the Congress

organisation as a General Secretary and I can say that I do represent some people, at least, him.

Shri Syamnandan Sahaya: That is Jaspat Roy Kapoor ?

Shri Gautam: If he is a Congress-man.

Shri Tyagi: I am an Ex-General Secretary.

Shri Gautam: Dr. Ambedkar has no personal axe of his own to grind. He is not interested in the U.P. At the request of some of us, he has reduced the number. He is neither in favour of 72 nor of 86. It is we who requested him and he has accepted our request. We are obliged to him for that. Therefore I oppose the amendment moved by Mr. Jaspat Roy Kapoor.

Dr. Ambedkar : Sir, I do not think I can at this late stage enter into any elaborate arguments with regard to the various matters, constitutional or otherwise, which have been raised. I do not think we have violated the Constitution as my friend Mr. T. T. Krishnamachari supposes in giving the allotted seats mentioned in the First Schedule to Part C States. We are perfectly within our constitutional rights in allotting the seats in this schedule. With regard to the amendment of the Third Schedule my friend Pandit Kunzru would have seen that it is only in one case as a matter of fact that the total number is reduced and that is with regard to Uttar Pradesh.

Mr. Deputy Speaker: Madras also.

Dr. Ambedkar: I was coming to it. I am taking Uttar Pradesh for my observation. There I am confronted with the fact that the State Government is very chary of increasing the size of the Upper Chamber and sitting as we are at Delhi, I do not like to sit in judgement over the decision of the State Government as to what is the suitable number for their Upper Chamber. They have thought that 72 is the proper and sufficient number for their Upper Chamber and it is on that basis that I have reduced 86 to 72. With regard to the changes made in the total number of Bihar, Bombay and Madras, I might say that the proposition enunciated by Mr. Tyagi today in the informal meeting that the total number should be divisible by 12 did appeal to me and it is for that reason that I have fixed 72 in the case of Bihar, Bombay and Madras. It will be noticed that my amendment as a matter of fact while it decreases the total number for Madras by only 3, increase the quota for Bihar and Bombay. There could therefore be no complaint on that account. I was sorry to see that I could not apply the same principle to Punjab because it has only got a minimum.

With regard to Bengal, it was felt that if the principle was applied *viz.,* divisible by 12, the number would go down from 51 to 48 and it was felt that Bengal was a big enough State to have at least 51 and I have therefore not touched the figure of these two States. In other cases my friend Mr. Tyagi will see that I have really

yielded to his principle.

With regard to the question of extending the Fourth Schedule to Village *Panchayats* or the Headmen of the *Panchayats,* I am sorry to say that I am not able to accept that suggestion for the simple reason that it is felt, I am sure, in large sections of this House that to include Village *Panchayats* as bodies who would have the right to send their representatives would merely be the duplication of the same electorate because in view of the fact that we are going to have adult suffrage, practically every member of the Village *Panchayat* would also have a vote in the election of the Lower House of that State and therefore it would be a needless duplication and I am not therefore prepared to accept his suggestion.

Shri Barman (West Bengal): What about the Members of the Municipalities and District Boards ?

Dr. Ambedkar: They might be, I cannot help it but to extend it to *Panchayats* would be a complete duplication of the votes—a sort of double voting—and I am not prepared to accept it. I do not know whether there is any other point. For Madras it is only a reduction of 3.

With regard to Delhi, whatever my friend may say, I have no doubt about it that the House has been more than generous.

Shri Syamnandan Sahaya: He himself is more than happy.

Dr. Ambedkar: It is not only being correct but very considerate.

Syed Nausherali : What about the Union Boards ?

Dr. Ambedkar: I quite see that the opinion of the Bengal Government and the view expressed by my two hon. friends today seem to differ. Some say the local board entry, which has been suggested by the West Bengal Government, should be retained and my two friends stated that it ought to be deleted and the entry of Union Boards should be there.

Syed Nausherali: Both may be there.

Dr. Ambedkar: I shall have to make some enquiries on this point. If I find that it is necessary to make a change it would not be difficult to bring in a small amendment to make the change. For the moment I must act upon advice which I think is reliable.

Shri J. R. Kapoor: What are the special reasons for increasing the number of seats of Bombay State from 66 to 72, when the next divisible number by 12 is 60.

Dr. Ambedkar: It is not a very wide difference. There is nothing sacred about one number or the other. All I want is divisibility by 12.

Mr. Deputy Speaker: Bombay is a composite Province consisting of Gujaratis, Marathis and Karnataks.

(The First, Second, Third and Fourth Schedules as amended were added to the Bill.)

Clause I was added to the Bill. (The motion moved by Dr. Ambedkar was adopted).